

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
5

6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION : :
9 : :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
12 : :
13

14 - HIGHLY CONFIDENTIAL -
15

16 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
17 - - -
18

19 January 10, 2019
20 - - -
21

22 Videotaped deposition of
23 FRANK DEVLIN, taken pursuant to
24 notice, was held at the offices of
 Zuckerman Spaeder, LLP, 1800 M Street NW,
 Suite 1000, Washington, D.C., beginning
 at 8:33 a.m., on the above date, before
 Michelle L. Gray, a Registered
 Professional Reporter, Certified
 Shorthand Reporter, Certified Realtime
 Reporter, and Notary Public.

25 - - -
26 GOLKOW LITIGATION SERVICES
27 877.370.3377 ph | 917.591.5672 fax
28 deps@golkow.com
29

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 BAKER & BAKER, PLLC 4 BY: WILLIAM C. BAKER, JR., ESQ. 5 300 East Government Street 6 Pensacola, Florida 32502 7 (850) 433-0888 8 Wcb850@gmail.com 9 Smh@bakerlawemail.com 10 - and - 11 WEISMAN KENNEDY & BERRIS, LPA 12 BY: JAMES A. DeROCHE, ESQ. 13 101 West Prospect Avenue, Suite 1600 14 Midland Building 15 Cleveland, Ohio 44115 16 (216) 696-7009 17 Jderoche@garson.com 18 Representing the Plaintiffs 19 20 ZUCKERMAN SPAEDER, LLP 21 BY: ALEXANDRA W. MILLER, ESQ. 22 1800 M. Street NW, Suite 1000 23 Washington, D.C. 20036 24 (202) 778-1845 smiller@zuckerman.com Representing the Defendant, CVS, and the Witness WILLIAMS & CONNOLLY, LLP BY: KATELYN ADAMS, ESQ. 725 12th Street, NW Washington, D.C. 20005 (202) 434-5148 kadams@wc.com Representing the Defendant, Cardinal Health</p>	<p style="text-align: right;">Page 4</p> <p>1 ALSO PRESENT: 2 Stephanie Heckman, Paralegal 3 (Baker & Baker, PLLC) 4 Justin L. Mann, Esq. (Law Clerk) 5 (Ropes Gray - via telephone) 6 Amy Kennedy, Paralegal 7 (Weisman Kennedy - via telephone)) 8 9 VIDEOTAPE TECHNICIAN: 10 Dan Lawlor 11 12 LITIGATION TECHNICIAN: 13 James Beall 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 3</p> <p>1 TELEPHONIC APPEARANCES: 2 3 MOTLEY RICE, LLC 4 BY: MICHAEL ELSNER, ESQ. 5 28 Bridgeside Boulevard 6 Mount Pleasant, South Carolina 29464 7 (843) 216-9373 8 melsner@motleyrice.com 9 Representing the Plaintiffs 10 11 JONES DAY 12 BY: CHRISTINE D. PROROK, ESQ. 13 77 West Wacker Drive 14 Chicago, Illinois 60601 15 (312) 269-4113 16 Cprorok@jonesday.com 17 Representing the Defendant, Walmart 18 19 ARNOLD & PORTER KAYE SCHOLER, LLP 20 BY: ZENO HOUSTON, ESQ. 21 250 West 55th Street 22 New York, New York 10019 23 (212) 836-7332 24 Zeno.houston@arnoldporter.com Representing the Defendants, Endo Health Solutions; Endo Pharmaceuticals, Inc.; Par Pharmaceutical Companies, Inc. f/k/a Par Pharmaceutical Holdings, Inc. JACKSON KELLY, PLLC BY: JONATHAN L. ANDERSON, ESQ. 500 Lee Street East Suite 1600 Charleston West Virginia 25301 (304) 340-1169 Jlanderson@jacksonkelly.com Representing the Defendant, AmerisourceBergen</p>	<p style="text-align: right;">Page 5</p> <p>1 - - - 2 I N D E X 3 - - - 4 5 Testimony of: 6 7 FRANK DEVLIN 8 By Mr. Baker 14 9 By Mr. DeRoche 384 10 11 12 - - - 13 E X H I B I T S 14 - - - 15 NO. DESCRIPTION PAGE 16 17 CVS 18 Devlin-P-18 E-mail Thread 89 19 1/3/08 20 Subject, New Rx 21 DEA SOP 22 CVS-MDLT1-000025204-59 23 24 CVS Devlin-P-48 Controlled Drug 96 DEA Standard Operating Procedures Manual CVS-MDLT1-000024877-41</p>

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1			
2	E X H I B I T S (Cont'd.)		
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4			
5	NO. DESCRIPTION PAGE		
6	CVS		
7	Devlin-P-53 E-mail, 10/8/12 343		
8	Subject, Conference		
9	Call Notes		
10	CVS-MDLT1-000033579-81		
11	CVS		
12	Devlin-P-55 Business Idea 321		
13	Description		
14	CVS-MDLT1-000034175-77		
15	CVS		
16	Devlin-P-56 Memo, 8/13/10 212		
17	Subject, Control		
18	Drug IRR Update		
19	CVS-MDLT1-000034183		
20	CVS		
21	Devlin-P-57 E-mail Thread 92		
22	5/19/09		
23	Subject, Updated		
24	DEA SOP		
	CVS-MDLT1-000034234-35		
	CVS		
	Devlin-P-64 Drug Fact Sheet 71		
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	CVS-MDLT1-000055613-36		
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	Devlin-P-68 E-mail, 5/16/11 226		
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	Monitoring		
	CVS-MDET1-000057736-37		

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2	E X H I B I T S (Cont'd.)		
3			
4			
5	NO. DESCRIPTION PAGE		
6	CVS		
7	Devlin-P-68A E-mail Thread 243		
8	1/28/11		
9	Subject, IRR		
10	Narratives		
11	CVS-MDLT1-000083966-71		
12	CVS		
13	Devlin-P-69 SOM Due Diligence 282		
14	Guidance Document		
15	CVS-MDLT1-000057741-43		
16	CVS		
17	Devlin-P-70 E-mail, 8/25/10 109		
18	Subject, Control Drug		
19	IRR Draft 3		
20	CVS-MDLT1-000057751-54		
21	CVS		
22	Devlin-P-71 E-mail Thread 159		
23	3/14/11		
24	Subject, IRR/SOM		
	Retunement BSR LOG		
	CVS-MDLT1-000057759		
	CVS-MDLT1-000055834		
	CVS		
	Devlin-P-81 E-mail Thread 137		
	9/1/10		
	Subject, DEA		
	Speaking Points		
	CVS-MDLT1-000075299-12		

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1			
2	E X H I B I T S (Cont'd.)		
3			
4			
5	NO. DESCRIPTION PAGE		
6	CVS		
7	Devlin-P-82 E-mail Thread 327		
8	10/12/10		
9	Subject, VBDC		
10	Question		
11	CVS-MDLT1-000075542		
12	CVS		
13	Devlin-P-92 E-mail Thread 331		
14	11/29/12		
15	Subject, Privileged		
16	And Confidential		
17	SOM Process Documentation		
18	CVS-MDLT1-000083064-66		
19	CVS		
20	Devlin-P-94 E-mail Thread 96		
21	11/5/09		
22	Re: 11/10/09		
23	CVS-MDLT1-000087889-90		
24	CVS		
	Devlin-P-95 E-mail Thread 212		
	7/26/10		
	Subject, SOM Update		
	CVS-MDLT1-000088522-34		
	CVS		
	Devlin-P-97 E-mail, 8/28/10 114		
	Subject, DEA SOP		
	8/25/10		
	CVS-MDLT1-000088956-25		

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1			
2	E X H I B I T S (Cont'd.)		
3			
4			
5	NO. DESCRIPTION PAGE		
6	CVS		
7	Devlin-P-98 E-mail Thread 102		
8	8/23/10		
9	Subject, DEA SOP		
10	CVS-MDLT1-000089188		
11	CVS		
12	Devlin-P-102 E-mail, 2/21/08 76		
13	Subject, DEA Letters		
14	SOMs		
15	CVS-MDLT1-000091508-18		
16	CVS		
17	Devlin-P-104 E-mail Thread 59		
18	1/18/13		
19	Subject, 1/18/13		
20	CVS-MDLT1-000103329		
21	CVS		
22	Devlin-P-106 E-mail Thread 356		
23	11/27/12		
24	Subject, SOM Meeting		
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	CVS-MDLT1-000029867-68		
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	Devlin-P-130 LinkedIn Profile 26		
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2	E X H I B I T S (Cont'd.)	
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4		
5	NO. DESCRIPTION PAGE	
6	CVS	
7	Devlin-P-132 Distribution Center 38	
8	ID XREF	
9	CVS	
10	Devlin-P-140 Suspicious Order 285	
11	Monitoring	
12	For PSE/Control	
13	Drugs	
14	8/27/10	
15	CVS-MDLT1-000061191-03	
16	CVS	
17	Devlin-P-143 E-mail, 10/13/10 148	
18	Subject, LP Analyst	
19	CVS-MDLT1-000104894-97	
20	CVS	
21	Devlin-P-146 Letter, 3/22/07 196	
22	Subject, Regulatory	
23	Consulting Services	
24	(Buzzeo PDMA)	
	CVS-MDLT1-00109199-06	
	CVS	
	Devlin-P-150 E-mail Thread 200	
	2/9/11	
	Subject, The CVS Retunement	
	CVS-MDLT1-000061141-42	
	CVS	
	Devlin-P-164 Chart, Native 323	
	Document Yes, No, Code	
	(No Bates)	

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2	E X H I B I T S (Cont'd.)	
3	- - -	
4		
5	NO. DESCRIPTION PAGE	
6	CVS	
7	Devlin-P-200 Item Review 469	
8	Reports	
9	CVS-MDLT1-00001195-04	
10	CVS	
11	Devlin-P-201 Item Review 426	
12	Reports	
13	CVS-MDLT1-000100763-74	
14	CVS	
15	Devlin-P-209 E-mail, 1/6/10 315	
16	Subject, Control Drug	
17	IRR Issue Recap	
18	CVS-MDLT1-000110260	
19	CVS	
20	Devlin-P-211 E-mail Thread 270	
21	2/24/10	
22	Subject, Adjustment	
23	To the CVS SOM	
24	CVS-MDLT1-000110434-36	

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1	- - -
2	DEPOSITION SUPPORT INDEX
3	- - -
4	
5	Direction to Witness Not to Answer
6	PAGE LINE
7	None.
8	Request for Production of Documents
9	PAGE LINE
10	None.
11	Stipulations
12	PAGE LINE
13	None.
14	Questions Marked
15	PAGE LINE
16	None.
17	
18	
19	
20	
21	
22	
23	
24	

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1 THE VIDEOGRAPHER: We are

2 now on the record.

3 My name is Dan Lawlor, I'm a

4 videographer with Golkow

5 Litigation Services.

6 Today's date is January 10,

7 2019, and the time is 8:33 a.m.

8 This video deposition is

9 being held in Washington, DC, in

10 the matter of National

11 Prescription Opiate litigation,

12 MDL Number 2804.

13 The deponent is Frank

14 Devlin.

15 Counsel will be noted on the

16 stenographic record.

17 The court reporter is

18 Michelle Gray and will now swear

19 in the witness.

20 - - -

21 ... FRANK DEVLIN,

22 having been first duly sworn, was

23 examined and testified as follows:

24 - - -

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1 EXAMINATION
 2 - - -
 3 BY MR. BAKER:
 4 Q. Please state your name.
 5 A. Frank Devlin.
 6 Q. Mr. Devlin, where do you
 7 live?
 8 A. I live in Pocasset,
 9 Massachusetts.
 10 Q. What is your employment
 11 right now?
 12 A. Excuse me?
 13 Q. Where are you employed right
 14 now?
 15 A. I own my own consulting
 16 company.
 17 Q. What's the name of the
 18 company?
 19 A. Seashore Risk Management.
 20 Q. And what is the nature of
 21 that business?
 22 A. It's a consulting firm
 23 focusing on safety, OSHA compliance,
 24 auditing, forklift training.

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1 Q. Are your customers corporate
 2 customers?
 3 A. Yes.
 4 Q. Is CVS one of your
 5 customers?
 6 A. No.
 7 Q. Have you courted CVS to be
 8 one of your customers?
 9 MS. MILLER: Object to form.
 10 BY MR. BAKER:
 11 Q. Have you tried to get CVS to
 12 become one of your customers?
 13 MS. MILLER: Objection.
 14 BY MR. BAKER:
 15 Q. Go ahead.
 16 A. No.
 17 Q. Have you made any contact
 18 with CVS since leaving CVS in 2012?
 19 A. No.
 20 Q. What was the reason you left
 21 CVS in 2012?
 22 A. A better employment
 23 opportunity.
 24 Q. What was the better

Page 16

1 employment opportunity?
 2 A. Amazon.
 3 Q. Is that where Mr. Burtner
 4 also went to work, Aaron Burtner?
 5 A. Yes.
 6 Q. Okay. Did -- did you help
 7 Mr. Burtner get employed at Amazon?
 8 MS. MILLER: Object to form.
 9 BY MR. BAKER:
 10 Q. Did you?
 11 MS. MILLER: Object.
 12 BY MR. BAKER:
 13 Q. Go ahead.
 14 Let me explain. When the
 15 attorney objects, she objects to form.
 16 That doesn't mean you can't answer the
 17 question. It's just a technicality in
 18 the rules of procedure where she says
 19 object to form, so she preserves the
 20 right to go to the judge and have the
 21 question looked at by the judge to
 22 determine if it's a properly phrased
 23 question. And -- but it doesn't mean you
 24 don't answer the question.

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1 So if she instructs you not
 2 to answer, that would be the only time
 3 you wouldn't answer the question. Fair
 4 enough?
 5 MS. MILLER: And just,
 6 Frank, that's correct. I'm noting
 7 my objections on the record. You
 8 may respond to the question unless
 9 I instruct you not to answer.
 10 THE WITNESS: Okay.
 11 Can you repeat the question?
 12 BY MR. BAKER:
 13 Q. Yeah, many times during this
 14 deposition counsel seated to your left
 15 will say object to form. That's her
 16 right to do that. That doesn't mean that
 17 you don't answer the question. It's just
 18 noted on the record that she objected to
 19 the question. It doesn't necessarily
 20 mean something's wrong with the question.
 21 It's just she's preserving her right to
 22 object at a later time.
 23 A. I understood.
 24 Q. Is that clear?

Page 18

1 All right. So what, if any,
2 contact did you have with Mr. Burtner
3 before he came to work for Amazon, after
4 you left --
5 A. Yes.
6 Q. -- CVS, you went to Amazon,
7 right?
8 A. That is correct.
9 Q. In 2012.
10 A. That is correct.
11 Q. Okay. What contact did you
12 have with Mr. Burtner after you left CVS
13 to go to Amazon?
14 A. I reached out to Mr. Burtner
15 for possible employment opportunity with
16 Amazon.
17 Q. When did you do -- okay.
18 When did you do that?
19 MS. MILLER: Bill, would you
20 just give him a chance to answer?
21 MR. BAKER: Sure.
22 BY MR. BAKER:
23 Q. And I didn't mean to
24 overstep your answer, but you're --

Page 19

1 you're kind of soft-spoken so I can't
2 tell when you're finished your answer.
3 THE WITNESS: Okay.
4 MS. MILLER: And, Frank,
5 give him time to complete his
6 question, please.
7 BY MR. BAKER:
8 Q. Are you ready for the
9 question?
10 A. Can you repeat your
11 question?
12 Q. Okay. The question is, when
13 did you reach out to Mr. Burtner for the
14 prospect of employment with Amazon when
15 you were at Amazon?
16 A. It probably would have been
17 sometime in 2013. I can't recall the
18 exact date.
19 Q. All right. And what was the
20 reason that you reached out to him?
21 MS. MILLER: Object to form.
22 THE WITNESS: I knew him and
23 I knew his capabilities.
24 BY MR. BAKER:

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1 Q. Do you know whether or not
2 he expressed anything to you about being
3 unhappy at CVS with his employment?
4 MS. MILLER: Objection.
5 THE WITNESS: No.
6 MS. MILLER: Frank, just
7 give me a little time, stepping on
8 my objections. Go ahead.
9 BY MR. BAKER:
10 Q. Did Mr. Burtner express to
11 you any problems going on within the
12 morale of employees at CVS while he was
13 there?
14 MS. MILLER: Object to form.
15 BY MR. BAKER:
16 Q. Did he express that to you
17 at all?
18 MS. MILLER: Object to form.
19 THE WITNESS: No, not that I
20 can recall.
21 BY MR. BAKER:
22 Q. How long did you work at
23 Amazon while Mr. Burtner was also at
24 Amazon?

Page 21

1 A. My employment at Amazon was
2 from beginning of November 2012 through
3 March of 2014.
4 Q. I'm going to go through a
5 list of acronyms which are abbreviations
6 for words. And I want to make sure
7 before we go into your deposition today
8 that when we use these acronyms, we're --
9 we're on the same page with respect to
10 these acronyms.
11 Okay? Are you with me? Do
12 you understand?
13 A. I do.
14 Q. Okay. All right. The first
15 acronym is SOM, can you tell us what SOM
16 stands for?
17 A. I believe that's suspicious
18 order monitoring.
19 Q. The next acronym is SOP, can
20 you tell us what SOP stands for?
21 MS. MILLER: Object to form.
22 THE WITNESS: I believe that
23 would be standard operating
24 procedure.

<p style="text-align: right;">Page 22</p> <p>1 BY MR. BAKER:</p> <p>2 Q. I'm asking you these</p> <p>3 questions in reference to how they were</p> <p>4 used at CVS. So that's the context of</p> <p>5 the question. So at CVS, SOP was</p> <p>6 standard operating procedure, correct?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: I believe so.</p> <p>9 I can't say 100 percent. There</p> <p>10 are a lot of -- a lot of</p> <p>11 abbreviations, whether it was at</p> <p>12 CVS or Amazon. So sometimes they</p> <p>13 tend to blend together.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. When we're talking about an</p> <p>16 SOM SOP, would that be a suspicious order</p> <p>17 monitoring standard of procedure at CVS</p> <p>18 when you were there?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Sir? What's the answer?</p> <p>23 MS. MILLER: Go ahead.</p> <p>24 THE WITNESS: No.</p>	<p style="text-align: right;">Page 24</p> <p>1 with that?</p> <p>2 A. I've heard the terminology.</p> <p>3 Q. DEA. Who is the DEA that</p> <p>4 you know to exist in the context of your</p> <p>5 employment when you worked there at CVS?</p> <p>6 A. That would be the Drug</p> <p>7 Enforcement Agency.</p> <p>8 Q. FDA, who would that be in</p> <p>9 the context of your employment at CVS</p> <p>10 when you worked in the suspicious order</p> <p>11 monitoring department?</p> <p>12 MS. MILLER: Objection.</p> <p>13 MR. BAKER: She objected.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. What does FDA mean to you?</p> <p>16 Food and Drug Administration. Do you</p> <p>17 understand that?</p> <p>18 A. I've heard that term used,</p> <p>19 yes.</p> <p>20 Q. Okay. CVS, what does that</p> <p>21 stand for?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: I've heard it</p> <p>24 stand for a couple different</p>
<p style="text-align: right;">Page 23</p> <p>1 BY MR. BAKER:</p> <p>2 Q. What would an SOM SOP be?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: I believe it</p> <p>5 would be suspicious order</p> <p>6 monitoring standard operating</p> <p>7 procedure.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Okay. When you're talking</p> <p>10 about a P&P, is that policy and</p> <p>11 procedure?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: Can you repeat</p> <p>14 that?</p> <p>15 BY MR. BAKER:</p> <p>16 Q. P&P, is that policy and</p> <p>17 procedure?</p> <p>18 MS. MILLER: Objection.</p> <p>19 THE WITNESS: I'd have to</p> <p>20 see the context in how it's being</p> <p>21 used.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Okay. DOJ, that's the</p> <p>24 Department of Justice. Are you familiar</p>	<p style="text-align: right;">Page 25</p> <p>1 terms.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Tell me.</p> <p>4 A. For Consumer Value Stores.</p> <p>5 Q. Anything else?</p> <p>6 A. Also Convenience Value, and</p> <p>7 I forget what the other S was.</p> <p>8 Q. C.F.R., Code of Federal</p> <p>9 Regulation, are you familiar with that?</p> <p>10 A. Which one?</p> <p>11 Q. Are you familiar with the</p> <p>12 concept of Code of Federal Regulation?</p> <p>13 Are you familiar with that term?</p> <p>14 A. I've heard the term</p> <p>15 "C.F.R.," yes.</p> <p>16 Q. CSA, Controlled Substances</p> <p>17 Act, have you ever heard of that?</p> <p>18 MS. MILLER: Objection.</p> <p>19 THE WITNESS: I believe I</p> <p>20 may have heard that, yes.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Okay. When you worked at</p> <p>23 CVS, that was from May of 25 -- May of</p> <p>24 2005 to October of 2012; is that right?</p>

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1 A. No.
2 Q. When did you work there?
3 A. February 11th, 1991, through
4 the end of October 2012.
5 Q. Do you have a LinkedIn page?
6 A. Yes.
7 Q. Let me show you what's been
8 marked as Plaintiff's Exhibit Number 130.
9 (Document marked for
10 identification as Exhibit
11 CVS-Devlin-P-130.)
12 BY MR. BAKER:
13 Q. Is this your LinkedIn page
14 that you're looking at?
15 A. I need to get my glasses.
16 Q. Is that it?
17 A. I need to look through it
18 first. Appears to be, yes.
19 Q. Okay. On your LinkedIn
20 page, the second-to-last page, it has CVS
21 Health.
22 MR. BAKER: Page forward,
23 please.
24 BY MR. BAKER:

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1 Q. At the top, it says here
2 that you were employed at CVS Health from
3 May 2005 to October 2012, seven years and
4 six months. Did you enter that data in
5 your page?
6 A. Yes.
7 Q. Okay. What was the reason
8 that you chose that time frame to tell
9 everybody that you were employed at CVS
10 Health as opposed to 1991 forward?
11 MS. MILLER: Objection.
12 THE WITNESS: Just from an
13 age standpoint.
14 BY MR. BAKER:
15 Q. What do you mean an age
16 standpoint?
17 A. Just there's no requirement
18 on LinkedIn as far as putting down exact
19 employment dates.
20 Q. What happened in May of 2005
21 with respect to your employment that
22 causes you to choose that date?
23 A. I believe at that point, and
24 not 100 percent sure that I probably

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1 would have been promoted to another level
2 in a director position.
3 Q. What position were you
4 promoted to in May of 2005 at CVS Health?
5 A. CVS had various levels of
6 director positions.
7 Q. What was the position?
8 A. It was a similar position to
9 what I was already doing.
10 Q. What was the name of the
11 position?
12 A. Director of logistics, loss
13 prevention.
14 Q. Okay. So at that point you
15 continued to work as director of
16 logistics, loss prevention from May 2005
17 to October 2012; is that right?
18 A. Can you repeat that?
19 Q. Did you work as director of
20 logistics, loss prevention from May 2005
21 to October 2012 at CVS Health?
22 A. Yes.
23 Q. Okay. During that time, was
24 CVS known as CVS Health or CVS Caremark?

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1 MS. MILLER: Objection.
2 THE WITNESS: They were
3 probably -- they've had so many
4 different names. It could have
5 been CVS Caremark.
6 BY MR. BAKER:
7 Q. Okay.
8 (Document marked for
9 identification as Exhibit
10 CVS-Devlin-P-131.)
11 BY MR. BAKER:
12 Q. Let me show you Exhibit 131.
13 I'm trying to get an accurate history of
14 the names of the corporations within CVS
15 Health. And I'd like to spend some time
16 doing that with you.
17 If you could turn -- this
18 comes from CVS Health's website. And if
19 you turn to the area of 2001 through
20 2006. Go about eight pages in.
21 A. What was the date again?
22 Q. 2001 at the top of the page.
23 Do you see it? Are you there?
24 A. "CVS introduces ExtraCare

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1 card"?
2 Q. Correct. Okay. Go down to
3 2003. It says, "CVS Caremark Rx and
4 AdvancePCS announce strategic
5 combination, creating a \$23 billion
6 company." Were you with them at the
7 time?
8 MS. MILLER: Objection.
9 BY MR. BAKER:
10 Q. Were you with CVS Caremark
11 at the time?
12 MS. MILLER: Objection.
13 THE WITNESS: I was employed
14 at CVS from February 11, 1991
15 through the end of October 2012.
16 BY MR. BAKER:
17 Q. Okay. So 2003 you would
18 have been employed by CVS Caremark?
19 MS. MILLER: Objection.
20 BY MR. BAKER:
21 Q. Yes?
22 A. Yes.
23 Q. Okay. All right. Then it
24 talks about in 2007, it says, "CVS" -- go

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1 to the next page. It says, "CVS
2 Corporation and Caremark Rx, Inc.,
3 complete their transformative merger,
4 creating CVS Caremark, the nation's
5 premier integrated pharmacy services
6 provider."
7 Is that, to your knowledge,
8 when CVS became known as CVS Caremark?
9 MS. MILLER: Objection.
10 BY MR. BAKER:
11 Q. Or not?
12 MS. MILLER: Objection.
13 THE WITNESS: That's what
14 this document says. I wouldn't
15 know that.
16 BY MR. BAKER:
17 Q. Who was your employer in
18 2007 at CVS, which CVS entity?
19 MS. MILLER: Objection.
20 THE WITNESS: I just refer
21 to CVS as CVS.
22 BY MR. BAKER:
23 Q. Okay.
24 A. I didn't get -- I didn't get

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1 kind of hung up as far as whether it's
2 CVS Pharmacy, CVS Distribution, CVS
3 Logistics, CVS Health, CVS Caremark.
4 It's CVS.
5 Q. Okay. Do you know when the
6 corporation became known as CVS Health?
7 MS. MILLER: Objection.
8 THE WITNESS: No.
9 BY MR. BAKER:
10 Q. Okay. Go to 2014, under the
11 history of the company.
12 MS. MILLER: Mr. Baker, just
13 a question about the document.
14 Where was this obtained
15 from?
16 MR. BAKER: From the
17 website, CVS.com. It says it
18 right there at the top.
19 BY MR. BAKER:
20 Q. You see on the page under
21 2014, do you see that? You're there.
22 2014. Go to the next page.
23 A. It's cut off.
24 Q. Go to the next page. Go

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1 about a third of the way down the page.
2 It says, "CVS Caremark announces that its
3 corporate name has changed to CVS Health
4 to further reflect its broader commitment
5 to healthcare."
6 Do you see that?
7 A. I do.
8 Q. Okay. Is that, to your
9 knowledge, when CVS Caremark became known
10 as CVS Health?
11 MS. MILLER: Objection.
12 THE WITNESS: I really
13 didn't pay attention to it.
14 BY MR. BAKER:
15 Q. Okay. Well, you list CVS
16 Health as your employer. That's why I'm
17 wondering why you chose that name. Is
18 that the last name that the company was
19 known as at the time that you left, or
20 did it become known as CVS Health after
21 you left?
22 MS. MILLER: Objection.
23 THE WITNESS: The LinkedIn
24 page, it's not -- the LinkedIn

<p style="text-align: right;">Page 34</p> <p>1 page isn't, as far as I know it is 2 not a legal document. And in 3 putting my history down, it's -- 4 you try to keep current. So it's 5 not a reflection of -- I didn't 6 get into -- again, I didn't get 7 into whether it's CVS, CVS 8 pharmacy, CVS Health. 9 When you update your 10 LinkedIn page, that comes up, it's 11 now referred to as CVS Health. 12 BY MR. BAKER: 13 Q. Okay. Let me explain. I'm 14 not criticizing you for putting CVS 15 Health on there. I just want know the 16 name of the company that paid you while 17 you worked there. That's all I'm getting 18 at. Okay. 19 So when you left in 2012, 20 was the company known as CVS Health or 21 CVS Caremark, or do you know? 22 MS. MILLER: Objection -- 23 objection. Asked and answered. 24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 36</p> <p>1 2006, where was your physical location? 2 A. It still may have been in 3 the distribution center. But I -- 4 Q. Okay. How long did that 5 continue? 6 A. Probably, I don't know, it 7 was 2007, 2008 I moved to the corporate 8 office which was just up the street. 9 Q. Okay. So -- and from 2008 10 all the way through the time that you 11 left in 2012, were you in the corporate 12 office in Woonsocket, Rhode Island? 13 A. Yes. Various -- various 14 locations. I was 1 CVS Drive. I was 15 also at the -- 16 Q. Let me show you what's 17 marked as Exhibit 130 -- 18 A. I didn't finish. 19 Q. Yeah, go ahead. I'm just 20 trying to move through this, because we 21 only have a certain amount of time to do 22 this. 23 A. Okay. 24 Q. I appreciate the fact that</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Do you know? 2 A. I believe I already answered 3 that. 4 Q. Okay. See, here is what I'm 5 asking you. Do you know whether or not 6 the company name was CVS Caremark or CVS 7 Health when you left, do you know? 8 That's all I'm asking. 9 MS. MILLER: Objection. 10 Asked and answered. 11 THE WITNESS: No. 12 BY MR. BAKER: 13 Q. Okay. You don't know. 14 Okay. 15 So when you worked there as 16 director of logistics loss prevention, 17 how many -- or excuse me. Where 18 physically were you located when you were 19 working as the director of logistics loss 20 prevention in 2005? 21 A. 2005. My office may have 22 been in the Woonsocket distribution 23 center. 24 Q. Where were you employed in</p>	<p style="text-align: right;">Page 37</p> <p>1 you're trying to be precise in your 2 answers, but if you drag it on beyond 3 what's necessary to answer the question, 4 it just makes us have to stay here that 5 much longer. And I'd really like to move 6 through this for your benefit, to catch 7 your airplane this afternoon and for 8 everybody's benefit. Okay? I'm not 9 trying to be ugly to you. I just want to 10 move through this. Okay? 11 A. All right. 12 Q. So if we could do that, I'd 13 appreciate you doing that in the context 14 of your answer. 15 A. Sure. 16 Q. I know you're nervous. It's 17 obvious from looking at you, but I'm not 18 trying to do anything other than ask you 19 straight questions and get straight 20 answers. Is that fair? 21 A. Okay. I just want to make 22 sure I understand the question. 23 Q. Sure. If you -- if you 24 think I'm being unfair with you, tell me.</p>

<p style="text-align: right;">Page 38</p> <p>1 Okay? But I'm trying to be very fair</p> <p>2 with you in how I treat you --</p> <p>3 A. No, I understand --</p> <p>4 Q. -- and I want to be very</p> <p>5 fair with you in terms of letting you</p> <p>6 look at the documentation that I'm</p> <p>7 looking at so you understand where I'm</p> <p>8 coming from. I'm just trying to get the</p> <p>9 facts. Is that -- is that clear?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay.</p> <p>12 MS. MILLER: And, Bill, just</p> <p>13 give him a chance to answer the</p> <p>14 question.</p> <p>15 MR. BAKER: Sure. Sure.</p> <p>16 (Document marked for</p> <p>17 identification as Exhibit</p> <p>18 CVS-Devlin-P-132.)</p> <p>19 BY MR. BAKER:</p> <p>20 Q. This is marked as</p> <p>21 Exhibit 132. This is --</p> <p>22 A. If I just can go back, I</p> <p>23 wanted to just discuss where my office</p> <p>24 was located.</p>	<p style="text-align: right;">Page 40</p> <p>1 Health across the United States?</p> <p>2 MS. MILLER: Objection.</p> <p>3 THE WITNESS: I'm sorry, can</p> <p>4 you rephrase the question?</p> <p>5 BY MR. BAKER:</p> <p>6 Q. When you last worked at CVS</p> <p>7 in October of 2012, that's when you last</p> <p>8 worked there, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. How many distribution</p> <p>11 centers were there for CVS? And I'm</p> <p>12 going to say CVS because there's so many</p> <p>13 different CVS entities.</p> <p>14 A. Right.</p> <p>15 Q. So when I say CVS, you know</p> <p>16 who I'm talking about, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. I'm talking about</p> <p>19 your employer in 2012.</p> <p>20 So how many distribution</p> <p>21 centers were there at that time?</p> <p>22 A. I'd say, off the top of my</p> <p>23 head, maybe about 20.</p> <p>24 Q. Okay. And out of that 20,</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Sure. Go ahead.</p> <p>2 A. I was 1 CVS Drive, and then</p> <p>3 towards the end of my tenure we moved to</p> <p>4 an office in Highland Drive which was in</p> <p>5 Cumberland, Rhode Island. But it was</p> <p>6 part of the same office complex.</p> <p>7 Q. Okay. But during the period</p> <p>8 of time that you were employed at CVS</p> <p>9 from 2005 to 2012 when you were in the</p> <p>10 logistics loss prevention department as</p> <p>11 the director, you were physically located</p> <p>12 in Rhode Island, correct?</p> <p>13 A. Yes. That's -- that's where</p> <p>14 my mail would come to, but I -- yes.</p> <p>15 Q. Okay. And that's where your</p> <p>16 physical office was located; is that</p> <p>17 right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. I've handed you</p> <p>20 Exhibit 132. This is a distribution</p> <p>21 center printout for CVS Health. Can you</p> <p>22 tell me when you worked there, when you</p> <p>23 last left in 2012, approximately how many</p> <p>24 distribution centers were there for CVS</p>	<p style="text-align: right;">Page 41</p> <p>1 how many were licensed for distributing</p> <p>2 narcotics?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: If you give me</p> <p>5 a moment I can try to recall.</p> <p>6 Maybe about eight.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Okay. Let's go through this</p> <p>9 list. We'll make sure I get all of them.</p> <p>10 Okay?</p> <p>11 Look on this list, and</p> <p>12 you'll see -- you can see where it's</p> <p>13 yellowed in on your screen. Do you see</p> <p>14 it on the screen?</p> <p>15 A. Yeah --</p> <p>16 Q. Okay.</p> <p>17 A. That's difficult for me to</p> <p>18 read.</p> <p>19 Q. Okay. We'll put --</p> <p>20 MS. MILLER: Mr. Baker, just</p> <p>21 one moment.</p> <p>22 MR. BAKER: Sure.</p> <p>23 MS. MILLER: Can you tell us</p> <p>24 the -- I notice there's no Bates</p>

<p style="text-align: right;">Page 42</p> <p>1 number on the document. 2 MR. BAKER: This is an -- 3 MS. MILLER: Can you tell us 4 where this originated from? 5 MR. BAKER: This is an 6 internet document from CVS.com. 7 And this is where I got it. And I 8 want to make sure that he is able 9 to look at the yellowed-in version 10 on the screen. 11 You can pull the screen to 12 you. 13 MS. MILLER: But, Mr. -- 14 Mr. Baker, this is as of June -- 15 MR. BAKER: 2014. 16 MS. MILLER: Well, it says 17 June, it's dated June 14, 2018. 18 MR. BAKER: Yeah, I'm going 19 to ask him which ones were in 20 existence when he was there. 21 MS. MILLER: Okay. 22 MR. BAKER: Okay? 23 THE WITNESS: I have 24 distance glasses that I brought</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. BAKER: Correct. 2 MS. MILLER: -- in 2012? 3 MR. BAKER: Correct. We're 4 going to go through that. 5 BY MR. BAKER: 6 Q. All right. The first -- you 7 see where it says type Rx? That's the 8 type of distribution center. Do you see 9 that, that would be Rx licensed? 10 A. Yes. 11 Q. Okay. All right. The first 12 one is CR, which is Conroe, Texas; is 13 that correct? 14 A. That was -- that was there, 15 yes. 16 Q. All right. Was that on 17 board in 2012? 18 A. I believe so, yes. 19 Q. All right. The second one 20 is Ennis, Texas. Do you see that? 21 A. Yes, correct? 22 Q. Was that on board as a 23 narcotics distribution center in 2012? 24 A. Yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 with me. 2 BY MR. BAKER: 3 Q. Okay. Go ahead. All right. 4 Let's go through it if we could. 5 A. Can -- 6 Q. Sure. 7 A. Do you want me to go get my 8 distance glasses? 9 Q. No. Just whatever you -- 10 you can pull the screen right -- 11 MS. MILLER: Or the document 12 in front of you is the same 13 document on the screen. 14 THE WITNESS: Okay. Just 15 it's difficult for me to see the 16 yellow highlight. 17 BY MR. BAKER: 18 Q. Are you ready? 19 A. If I can pull the screen 20 closer. 21 Q. Yes. 22 MS. MILLER: And again, 23 Bill, your question is as of when 24 he left --</p>	<p style="text-align: right;">Page 45</p> <p>1 MS. MILLER: Objection. 2 BY MR. BAKER: 3 Q. What does Rx mean to you? 4 MS. MILLER: Objection. 5 THE WITNESS: Pharmacy. 6 BY MR. BAKER: 7 Q. Okay. All right. So what 8 do you call the type of licensing that 9 these distribution centers have when they 10 are able to distribute narcotics, what do 11 you call that? 12 MS. MILLER: Objection. 13 THE WITNESS: I would call 14 it a DEA registered facility. 15 BY MR. BAKER: 16 Q. Okay. A DEA registered 17 facility is one that distributes -- that 18 has a license to distribute some form of 19 narcotics; is that right? 20 MS. MILLER: Objection. 21 THE WITNESS: It would be 22 Controls III through V, I believe. 23 BY MR. BAKER: 24 Q. Okay. Controlled Substances</p>

<p style="text-align: right;">Page 46</p> <p>1 III through V, correct?</p> <p>2 A. Right.</p> <p>3 Q. All right. And you know</p> <p>4 that certain controlled substances under</p> <p>5 III were narcotics, meaning hydrocodone</p> <p>6 combination products, correct?</p> <p>7 MS. MILLER: Objection.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. You knew that?</p> <p>10 MS. MILLER: Objection.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Right?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: Can you repeat</p> <p>15 the question?</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Did you know that</p> <p>18 hydrocodone combination products were</p> <p>19 Schedule III under the FDA?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Did you know that?</p> <p>23 MS. MILLER: Objection.</p> <p>24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 48</p> <p>1 next one, Indianapolis, Indiana, was that</p> <p>2 one of the facilities, one of the</p> <p>3 distribution centers for CVS that</p> <p>4 distributed controlled substances?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Kansas City, was that</p> <p>7 on board when you were there or did that</p> <p>8 open after you left?</p> <p>9 A. I'm not aware of Kansas</p> <p>10 City.</p> <p>11 Q. Okay. Move to the next</p> <p>12 page. New Jersey, which was Lumberton,</p> <p>13 New Jersey. Was that a controlled</p> <p>14 substances distribution center for CVS</p> <p>15 when you were there, in Lumberton, New</p> <p>16 Jersey?</p> <p>17 A. Yes.</p> <p>18 Q. Orlando, Florida, was that a</p> <p>19 controlled substances distribution center</p> <p>20 when you were at CVS?</p> <p>21 A. Yes.</p> <p>22 Q. Knoxville, Tennessee, was</p> <p>23 that a controlled substance distribution</p> <p>24 center when you were at CVS?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Controlled substances. If</p> <p>2 they were Schedule III controlled</p> <p>3 substances under the FDA scheduling, did</p> <p>4 you know that?</p> <p>5 MS. MILLER: Objection.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. When you were there in 2012?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: At one point.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Okay. I know. Did you know</p> <p>12 that, is what I'm asking?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Okay. So let's move forward</p> <p>17 in this list. You have Florida, Vero</p> <p>18 Beach, Florida. Was that one of the</p> <p>19 facilities that distributed narcotics?</p> <p>20 MS. MILLER: Objection.</p> <p>21 THE WITNESS: I would use</p> <p>22 the term "controls."</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Okay. With respect to the</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes.</p> <p>2 Q. Patterson, California, was</p> <p>3 that a controlled substance distribution</p> <p>4 center when you were at CVS?</p> <p>5 A. Yes.</p> <p>6 Q. North Smithfield, Rhode</p> <p>7 Island, was that a controlled substance</p> <p>8 distribution center when you were at CVS?</p> <p>9 MS. MILLER: Mr. Baker, I'm</p> <p>10 sorry, can you tell me where you</p> <p>11 are in the document?</p> <p>12 MR. BAKER: About at the</p> <p>13 bottom of Page 2.</p> <p>14 MS. MILLER: Okay. Thank</p> <p>15 you.</p> <p>16 MR. BAKER: Okay.</p> <p>17 THE WITNESS: Can you repeat</p> <p>18 that?</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Patterson, California, was</p> <p>21 that a controlled substances distribution</p> <p>22 center when you were at CVS?</p> <p>23 A. Yeah, I believe so, yes.</p> <p>24 Q. Okay. North Smithfield,</p>

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1 Rhode Island, was that a controlled
2 substances distribution center when you
3 were there at CVS?
4 A. Yes.
5 Q. Chemung, New York, was that
6 a controlled substance distribution
7 center for CVS when you were there?
8 A. Yes.
9 Q. Are you familiar with the
10 scheduling of controlled substances
11 through the Food and Drug Administration?
12 MS. MILLER: Objection.
13 THE WITNESS: I'm aware of
14 the scheduling. I'm not -- I
15 really can't recall as far as what
16 might be a V, what might be a IV,
17 what might be a III, what might be
18 a II.
19 BY MR. BAKER:
20 Q. Do you know, if you look
21 through that list that I just gave you of
22 the distribution centers, there's
23 different names of corporations that are
24 listed as the owners of those

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1 distribution centers.
2 Do you see that on that
3 list?
4 MS. MILLER: Objection.
5 BY MR. BAKER:
6 Q. Let's go through first,
7 okay. If you start with Conroe, Texas.
8 Do you see that?
9 A. I do see that.
10 Q. Okay. Do you see it says
11 the DC name is CVS Pharmacy, Inc.? Do
12 you see that?
13 A. I do.
14 Q. Now, if you skip down to
15 Florida, the Vero Beach distribution
16 center, it says "CVS Vero, Florida
17 Distribution LLC."
18 Do you see that?
19 A. Yes, sir.
20 Q. Do you know why CVS names
21 these different facilities different
22 names instead of the same thing?
23 A. No idea.
24 MS. MILLER: Objection.

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1 BY MR. BAKER:
2 Q. Okay. Look down below
3 there. It says Indiana, CVS Indiana LLC.
4 Do you see that?
5 A. Yes.
6 Q. Do you know why that's named
7 CVS Indiana LLC as opposed to, for
8 instance, CVS Pharmacy, Inc., or CVS
9 Healthcare or CVS something else? Do you
10 know why it's named that?
11 MS. MILLER: Objection.
12 THE WITNESS: No.
13 BY MR. BAKER:
14 Q. Was there any strategy that
15 you're aware of at CVS for naming these
16 facilities different corporate names like
17 that?
18 MS. MILLER: Objection.
19 THE WITNESS: It wasn't my
20 responsibility.
21 BY MR. BAKER:
22 Q. Okay. If you look at the
23 Lumberton, New Jersey one on the second
24 page. It lists that as owned by CVS

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1 Pharmacy, Inc.
2 Do you see that?
3 A. Yes.
4 Q. Okay. If you look at
5 Chemung, New York. Look at the bottom of
6 Page 2. It says it's owned by CVS Rx
7 Services, Inc. Do you know why that
8 exists like that, as opposed to being
9 owned by CVS Pharmacy, Inc., or another
10 CVS entity?
11 MS. MILLER: Objection.
12 THE WITNESS: No.
13 BY MR. BAKER:
14 Q. When you were working there
15 last, at CVS, in 2012, which CVS entity
16 issued your paycheck?
17 A. I can't recall. I had
18 direct deposit.
19 Q. All right. From the time
20 that you worked at CVS from 2005 to 2012
21 in the department of logistics loss
22 prevention, were you involved with the
23 suspicious order monitoring program of
24 CVS?

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1 A. First off, the department I
2 actually worked in would be the loss
3 prevention department.
4 Q. I understand that. My
5 question was, were you involved with the
6 suspicious order monitoring program?
7 A. During a period of time,
8 Yes, I was.
9 Q. Okay. And did that start in
10 2008?
11 MS. MILLER: Objection.
12 THE WITNESS: No. I believe
13 it would have been earlier than
14 that.
15 BY MR. BAKER:
16 Q. Okay. When did you first
17 start getting involved in the suspicious
18 order monitoring program at CVS?
19 A. I believe it may have been
20 around 2007.
21 Q. Okay. Was that when you
22 were involved with the initial drafts of
23 the suspicious order monitoring policy
24 and procedure?

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1 MS. MILLER: Objection.
2 THE WITNESS: Can you repeat
3 that, please?
4 BY MR. BAKER:
5 Q. Was that when you started to
6 get involved with the suspicious order
7 monitoring policy and procedure drafts?
8 MS. MILLER: Objection.
9 THE WITNESS: I would have
10 been involved in that.
11 BY MR. BAKER:
12 Q. Okay. Before August --
13 excuse me.
14 Before 2007, are you aware
15 of any written suspicious order
16 monitoring policy and procedure in
17 existence at CVS?
18 A. There may have been some
19 processes in place that I could say would
20 be related to suspicious order
21 monitoring. I can't -- I cannot -- you
22 know, I can't recall a particular
23 standard operating procedure, but I
24 believe there were some processes in

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1 place.
2 Q. But so far as the
3 standard -- a written standard operating
4 procedure, to your knowledge that didn't
5 exist before 2007; is that correct?
6 A. Again, there may have been
7 some documents that would have touched
8 upon it. But I can't say. I can't
9 recall.
10 Q. Okay. When did you get
11 involved -- when did you, while you were
12 employed at CVS, get involved with the
13 writing, drafting or implementation of a
14 specific suspicious order monitoring
15 policy and procedure?
16 MS. MILLER: Objection.
17 THE WITNESS: I don't know
18 if I can really recall the
19 beginning when that would have
20 happened.
21 BY MR. BAKER:
22 Q. Okay. During the time that
23 you were involved in loss prevention at
24 CVS, what sort of losses were you trying

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1 to prevent?
2 MS. MILLER: Objection.
3 THE WITNESS: So job
4 responsibilities or?
5 BY MR. BAKER:
6 Q. What were you trying to
7 prevent the loss of?
8 A. The position was to protect
9 the, you know, people, assets --
10 Q. At the time --
11 A. -- of the company.
12 MS. MILLER: If you can just
13 let him finish. Thank you.
14 BY MR. BAKER:
15 Q. As it relates to the
16 distribution of narcotics out of the
17 distribution centers, what was your
18 involvement with the suspicious order
19 monitoring process in relation to those
20 narcotics?
21 MS. MILLER: Objection.
22 THE WITNESS: I'm not sure I
23 understand your question.
24 BY MR. BAKER:

<p style="text-align: right;">Page 58</p> <p>1 Q. With respect to the 2 distribution of narcotics out of CVS 3 distribution centers, what was your 4 involvement while you were employed from 5 2005 to 2012 with respect to the 6 suspicious order monitoring of those 7 narcotics? 8 MS. MILLER: Objection. 9 THE WITNESS: Well, from a 10 loss prevention standpoint, I 11 would have been involved as far as 12 the security, safety of the 13 products from time of receipt at 14 the distribution center to when it 15 was put into the controlled drug 16 cage from when the order would 17 have fulfilled to when it would 18 have been loaded onto a trailer 19 and ultimately delivered to the 20 store and ensuring that there were 21 proper checks and balances in 22 place to prevent any diversion 23 activity of the items. 24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 60</p> <p>1 to look at this. It says here, "Tom, 2 below are some bullet points on the 3 importance of including OV orders in the 4 SOM algorithm." 5 Do you know what OV means in 6 the context of that? 7 MS. MILLER: Objection. 8 BY MR. BAKER: 9 Q. Do you know? 10 A. I do not. 11 Q. I'm going to ask you to 12 assume that means outside vendor. I'm 13 going to ask you to assume that SOM means 14 suspicious order monitoring. Does that 15 sound accurate as to how that should be 16 used in terms of that sentence? 17 MS. MILLER: Objection. 18 BY MR. BAKER: 19 Q. To your knowledge? 20 A. I don't know. 21 Q. Okay. It says, "Why this is 22 needed." It says, "DEA Know Your 23 Customer requirements." 24 Do you see that?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Such as loss of the pills? 2 Would that be -- 3 MS. MILLER: Objection. 4 BY MR. BAKER: 5 Q. Would that be an example? 6 A. Loss of pills, it could be 7 ensuring the proper shipment of the 8 pills. Also the, you know, proper 9 receipt. 10 MR. BAKER: Exhibit 104 11 please. 12 (Document marked for 13 identification as Exhibit 14 CVS-Devlin-P-104.) 15 BY MR. BAKER: 16 Q. This is an e-mail dated 17 1/8/2013 from Craig Schiavo to Tom 18 Bourque at CVS. This was after you were 19 gone; is that right? 20 A. I was not employed in 2013. 21 Q. Okay. Do you know who Craig 22 Schiavo is and who Tom Bourque are? 23 A. No. 24 Q. All right. Let me ask you</p>	<p style="text-align: right;">Page 61</p> <p>1 A. I see that on the document, 2 yes. 3 Q. Do you know what Know Your 4 Customer means in the context of 5 suspicious order monitoring? 6 MS. MILLER: Objection. 7 BY MR. BAKER: 8 Q. If you know, just tell me. 9 If you don't, just tell me that you 10 don't. 11 A. I believe who are you 12 shipping the controls to. 13 Q. Is that it, just to whom you 14 are shipping? That's all it means to 15 you? 16 A. That's -- yes. 17 Q. Does that mean anything more 18 than that to you? 19 MS. MILLER: Objection. 20 THE WITNESS: No. 21 BY MR. BAKER: 22 Q. Do you know what the DEA 23 definition of Know Your Customer even 24 means?</p>

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1 MS. MILLER: Objection.
2 THE WITNESS: No, I don't --
3 I don't recall that.
4 BY MR. BAKER:
5 Q. When you were employed at
6 CVS in the logistics loss prevention
7 program, did you have responsibilities
8 with respect to the suspicious order
9 monitoring program?
10 A. I was involved in the
11 process, yes.
12 Q. Okay. And getting involved
13 in that process, did you think -- did you
14 take it upon yourself to learn what the
15 definition of Know Your Customer means
16 with respect to DEA expectations?
17 MS. MILLER: Objection.
18 THE WITNESS: I'm not sure I
19 understand your question.
20 BY MR. BAKER:
21 Q. Did you -- do you -- does
22 that phrase mean anything to you, Know
23 Your Customer, in the context of DEA
24 expectations with respect to suspicious

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1 order monitoring?
2 MS. MILLER: Objection.
3 Give me a chance to object. Go
4 ahead, Frank.
5 THE WITNESS: As I
6 mentioned, know who you're
7 shipping the product to.
8 BY MR. BAKER:
9 Q. Okay. Now, let me ask to
10 you look down below. It says, "Potential
11 issues if not account for in realtime."
12 Do you see where the star is
13 where the asterisk is? It says, "Stores
14 can place phone orders which have no
15 visibility to until a later time.
16 Currently have a store which had a 68,000
17 hydrocodone pill loss and was placing
18 phone orders to outside vendors."
19 Do you see that?
20 A. I do.
21 Q. This is an example of loss
22 prevention -- or this is an example of
23 something that would come under loss
24 prevention, would it not, losing 68,000

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1 hydrocodone pills --
2 MS. MILLER: Objection.
3 BY MR. BAKER:
4 Q. -- at a CVS facility?
5 A. After leaving CVS in 2012, I
6 cannot speak to who was responsible for
7 what.
8 Q. Okay. I'm just asking, is
9 that the type of thing that, when you
10 were there, if something like this
11 happened, it would come under loss
12 prevention, is that the department it
13 would come under?
14 MS. MILLER: Objection.
15 THE WITNESS: I don't recall
16 a 68,000 loss.
17 BY MR. BAKER:
18 Q. I didn't say it occurred
19 while you were there. I said if it
20 happened when you were there, is this the
21 type of thing that would come under loss
22 prevention for loss prevention to
23 investigate?
24 MS. MILLER: Objection.

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1 THE WITNESS: I believe it
2 would be a -- not only loss
3 prevention involved, but from an
4 operational standpoint involvement
5 also.
6 BY MR. BAKER:
7 Q. Okay. Do you know what a
8 Form 106 is with the DEA?
9 A. I can recall the term. I
10 believe it's if you have a loss of
11 controlled drugs.
12 Q. And when something like this
13 happens, if something like this happened
14 when you were there, where 68,000 pills
15 were lost, is that the type of thing that
16 would have caused you to fill out a Form
17 106 and send it to the DEA?
18 MS. MILLER: Objection.
19 THE WITNESS: No.
20 BY MR. BAKER:
21 Q. Who would have done that, if
22 anybody?
23 MS. MILLER: Objection.
24 THE WITNESS: It would

<p style="text-align: right;">Page 66</p> <p>1 depend on where it was originating 2 from. 3 BY MR. BAKER: 4 Q. So if 68,000 pills were lost 5 in the CVS chain, are you saying that 6 that's not something that should be 7 reported to the DEA? 8 MS. MILLER: Objection. 9 THE WITNESS: I didn't say 10 that. 11 BY MR. BAKER: 12 Q. Okay. Why would you not 13 fill out a Form 106 in that instance 14 then? 15 MS. MILLER: Objection. 16 Mischaracterizes testimony. 17 THE WITNESS: Again, when I 18 was there? 19 BY MR. BAKER: 20 Q. Yes. 21 A. It wasn't my responsibility. 22 Q. Who would have been the 23 person when you were there? 24 A. It would be the entity that</p>	<p style="text-align: right;">Page 68</p> <p>1 time item orders into our SOM system." 2 Do you see that? 3 A. I do. I would like a moment 4 to read it to myself. 5 Q. Okay. I'm reading it to you 6 as we go along. 7 A. I'm a very visual person. 8 Q. I understand, but I have 9 limited time and I don't have time for 10 you to re-read stuff that I'm reading 11 directly to you. If we could just move 12 through it. I'm not trying to be ugly to 13 you, but I really want to move through 14 this. 15 MS. MILLER: Bill, I know, 16 you've just got to give him a 17 chance to read it himself. 18 THE WITNESS: I respect your 19 time, sir. I really do. And I, 20 you know, certainly want to 21 cooperate as much as possible. I 22 just, from a learning standpoint, 23 I don't do well if people read to 24 me and then I have to comment.</p>
<p style="text-align: right;">Page 67</p> <p>1 the possible loss originated from. 2 Q. Meaning what, meaning like 3 the distribution center? 4 A. If it -- well, in this 5 instance here, you are mentioning an 6 outside vendor. 7 Q. The outside vendor orders -- 8 go back to the document. Go back to the 9 document. It says, "Below are bullets on 10 the importance of including outside 11 vendor orders in the SOM algorithm." 12 Do you see that, at the top? 13 A. Yes. 14 Q. Okay. It says, "Why it is 15 needed. Know your customer 16 requirements." 17 Do you see that? 18 A. Yes. 19 Q. Okay. It says, "In order 20 for dispensing data contained in the 21 algorithm be useful, we must account for 22 all controlled substances ordered. To 23 track all NDC numbers ordered by store 24 and have ability to add unknown/first</p>	<p style="text-align: right;">Page 69</p> <p>1 I literally have to read. 2 So I apologize for that. But 3 that's -- that's just who I am. 4 BY MR. BAKER: 5 Q. Okay. 6 A. I'm reading it. I don't 7 know if I still fully understand what 8 it -- 9 Q. Okay. Well, it says here, 10 "Potential issues if not account for in 11 realtime. Store may order a little from 12 both the outside vendor and the DC to 13 stay under the radar." 14 Do you know what that means? 15 A. No. I didn't write this 16 document. 17 Q. Okay. When you were there 18 at CVS, were the stores that your 19 distribution centers over which you were 20 loss prevention director, did those 21 include distribution centers that were 22 licensed to distribute narcotics from the 23 distribution center to a CVS pharmacy? 24 MS. MILLER: Objection.</p>

<p style="text-align: right;">Page 70</p> <p>1 BY MR. BAKER: 2 Q. Yes or no? 3 MS. MILLER: Objection. 4 THE WITNESS: Yes. 5 BY MR. BAKER: 6 Q. Okay. And did those 7 narcotics include Schedule III narcotics? 8 MS. MILLER: Objection. 9 THE WITNESS: I believe so. 10 BY MR. BAKER: 11 Q. And did those narcotics 12 include hydrocodone combination products? 13 MS. MILLER: Objection. 14 THE WITNESS: I believe so. 15 BY MR. BAKER: 16 Q. And do you know hydrocodone 17 combination products to be known as 18 opioids? 19 MS. MILLER: Objection. 20 THE WITNESS: Again, I 21 always used the term "controlled 22 substance." 23 BY MR. BAKER: 24 Q. Okay. Do you know what the</p>	<p style="text-align: right;">Page 72</p> <p>1 of Media File Number 2. The time 2 is 9:30. 3 BY MR. BAKER: 4 Q. You have in front of you the 5 DEA drug fact sheet. 6 Do you see that? 7 A. Yes, sir. 8 Q. Okay. It lists hydrocodone. 9 It says, "Hydrocodone is the most 10 frequently prescribed opioid in the 11 United States." 12 Do you see that? 13 A. No. 14 MS. MILLER: Bill, can you 15 direct him to a page? 16 BY MR. BAKER: 17 Q. Okay. Go to the second page 18 of your DEA drug fact sheet. If you look 19 on the monitor, it's right in front of 20 you. 21 Do you see it? 22 A. It's easier for me to look 23 at the paper. 24 Q. Do you see where it says</p>
<p style="text-align: right;">Page 71</p> <p>1 term "opioid" means? 2 MS. MILLER: Objection. 3 MR. BAKER: Pull up 4 Exhibit 64 please. 5 (Document marked for 6 identification as Exhibit 7 CVS-Devlin-P-64.) 8 BY MR. BAKER: 9 Q. I'd like you to pull up 10 hydrocodone, which is the second page. 11 A. Would I be able to take a 12 break? 13 Q. Do you need to go to the 14 bathroom? 15 A. I do. 16 MR. BAKER: Okay. Sure. Go 17 ahead. 18 MS. MILLER: Go off the 19 record. 20 THE VIDEOGRAPHER: Going off 21 the record. The time is 9:20. 22 (Short break.) 23 THE VIDEOGRAPHER: We are 24 going back on record. Beginning</p>	<p style="text-align: right;">Page 73</p> <p>1 "hydrocodone" at the top? 2 A. Yes. 3 Q. Okay. Do you see where it 4 says, "Hydrocodone is the most frequently 5 prescribed opioid in the United States 6 and is associated with more drug abuse 7 and diversion than any other illicit 8 (sic) or illicit opioid." 9 Do you see that? 10 A. Yes. 11 Q. Okay. Did you know this 12 before it was read to you today by 13 looking at this DEA drug fact sheet? 14 MS. MILLER: Objection. 15 BY MR. BAKER: 16 Q. Did you know this? 17 MS. MILLER: Objection. 18 THE WITNESS: Hydrocodone, 19 per se, I'm not sure. 20 BY MR. BAKER: 21 Q. Okay. Did the distribution 22 centers over which you were the logistics 23 director -- director of logistics and 24 loss prevention, distribute hydrocodone</p>

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1 combination products?
2 A. I believe so.
3 Q. Okay. Do you know those to
4 be opioids?
5 MS. MILLER: Objection.
6 THE WITNESS: Not at the
7 time.
8 BY MR. BAKER:
9 Q. Okay. Do you know it now?
10 A. Now?
11 Q. Do you know that now?
12 A. After reading, seeing this,
13 yes.
14 Q. Okay. Have you ever heard
15 of the opioid crisis?
16 A. I have recently heard of it,
17 yes.
18 Q. Did you know about it to be
19 in existence which you were employed at
20 CVS?
21 MS. MILLER: Objection.
22 THE WITNESS: No.
23 BY MR. BAKER:
24 Q. That was never discussed

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1 with anybody at CVS, the opioid crisis or
2 the nature of the opioid crisis going on
3 from 2005 to 2012 when you were in loss
4 prevention logistics?
5 MS. MILLER: Objection.
6 BY MR. BAKER:
7 Q. That was never discussed?
8 MS. MILLER: Objection.
9 THE WITNESS: No, not that I
10 can recall.
11 BY MR. BAKER:
12 Q. Did you ever attend any DEA
13 meetings of any type, any DEA conferences
14 of any type?
15 A. Not that I can recall.
16 Q. Did you ever attend any
17 training on the opioid crisis while you
18 were at CVS in logistics and loss
19 prevention?
20 A. No, not that I recall.
21 MR. BAKER: Okay. Go to
22 Exhibit Number 58.
23 MS. MILLER: I don't think
24 we have Exhibit 58.

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1 MR. BAKER: Don't have 58?
2 Go to exhibit 102.
3 MS. MILLER: Is that a new
4 exhibit, Bill?
5 MR. BAKER: Yeah, Exhibit
6 102.
7 MS. MILLER: Is that a new
8 one?
9 MR. BAKER: Yes.
10 (Document marked for
11 identification as Exhibit
12 CVS-Devlin-P-102.)
13 BY MR. BAKER:
14 Q. Here.
15 MS. MILLER: Thank you.
16 BY MR. BAKER:
17 Q. I've handed you Exhibit 102,
18 which is an e-mail from Ron Buzzeo to Amy
19 Lynn Brown dated 2/21/2008. First of
20 all, do you know who Ron Buzzeo is? Do
21 you know who Ron Buzzeo is?
22 A. Yes.
23 Q. He owns a company named
24 Cegedim. Is that it? Is that the name

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1 of it?
2 MS. MILLER: Objection.
3 THE WITNESS: Something like
4 that.
5 BY MR. BAKER:
6 Q. It was a consulting company
7 that you were in touch with while you
8 were at CVS. You were in touch with him
9 directly; is that correct?
10 A. On occasion, yes.
11 Q. Okay. In the context of
12 developing a suspicious order monitoring
13 system at CVS?
14 A. Yes.
15 Q. Okay. Look at these letters
16 that are attached to this e-mail. These
17 are DEA letters dated September 27, 2006
18 and February 7, 2007. Do you see those
19 two letters? And the last one, third
20 letter, December 27, 2007.
21 Do you see that?
22 A. Yes.
23 Q. Okay. Have you ever read
24 these letters before today?

<p style="text-align: right;">Page 78</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Did you read all</p> <p>3 three of them before today?</p> <p>4 A. Not fully.</p> <p>5 Q. Okay. Pull up the first</p> <p>6 letter. We're going to the third page of</p> <p>7 the exhibit.</p> <p>8 MS. MILLER: And just for</p> <p>9 purposes of the transcript. Do</p> <p>10 you -- were you asking him back in</p> <p>11 his time at CVS if he read these</p> <p>12 letters, when he was employed at</p> <p>13 CVS?</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Let's ask it both ways.</p> <p>16 When you were employed at CVS, did you</p> <p>17 read these letters?</p> <p>18 A. I can recall the concept of</p> <p>19 one of the letters.</p> <p>20 Q. Okay.</p> <p>21 A. Not sure of the date.</p> <p>22 Q. Okay. This e-mail is dated</p> <p>23 2/21/08 from Ron Buzzeo to Amy Brown,</p> <p>24 correct?</p>	<p style="text-align: right;">Page 80</p> <p>1 suspicious orders when discovered by the</p> <p>2 registrant. Suspicious orders include</p> <p>3 orders of unusual size, orders deviating</p> <p>4 substantially from a normal pattern and</p> <p>5 orders of unusual frequency."</p> <p>6 Did I quote that letter</p> <p>7 correctly?</p> <p>8 A. I believe so.</p> <p>9 Q. Okay. Is this the letter</p> <p>10 that -- is this the content of what you</p> <p>11 read in the letters that you were</p> <p>12 provided when you were at CVS?</p> <p>13 MS. MILLER: Objection.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. The letters from DEA?</p> <p>16 MS. MILLER: Objection.</p> <p>17 THE WITNESS: I can recall</p> <p>18 seeing a letter. I can't recall</p> <p>19 if that exact language was in the</p> <p>20 letter.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Are you familiar with the</p> <p>23 concept of 21 C.F.R. 1301.74?</p> <p>24 MS. MILLER: Objection.</p>
<p style="text-align: right;">Page 79</p> <p>1 A. That's what it states.</p> <p>2 Q. And it attaches these three</p> <p>3 letters, correct?</p> <p>4 A. It appears so.</p> <p>5 Q. Okay. Let's go to the first</p> <p>6 letter, September 27, 2006. Do you see</p> <p>7 that one?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Go to Page 2 of that</p> <p>10 letter. And you'll see about halfway</p> <p>11 down where it says, "The DEA regulations</p> <p>12 require." If you can bold that.</p> <p>13 Okay. I want you to read</p> <p>14 this with me.</p> <p>15 "The DEA regulations require</p> <p>16 all distributors to report suspicious</p> <p>17 orders of controlled substances.</p> <p>18 Specifically, the regulations state in 21</p> <p>19 C.F.R. 1301.74(b): "The registrant shall</p> <p>20 design and operate a system to disclose</p> <p>21 to the registrant suspicious orders of</p> <p>22 controlled substances. The registrant</p> <p>23 shall inform the field division office of</p> <p>24 the administration in his area of</p>	<p style="text-align: right;">Page 81</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Okay. Were you not familiar</p> <p>4 with that Code of Federal Regulation when</p> <p>5 you were director of loss prevention,</p> <p>6 logistics?</p> <p>7 A. I wouldn't be familiar with</p> <p>8 the number.</p> <p>9 Q. How about the text of it,</p> <p>10 "The registrant shall design and operate</p> <p>11 a system to disclose to the registrant</p> <p>12 suspicious orders of controlled</p> <p>13 substances." Were you familiar with that</p> <p>14 text?</p> <p>15 A. Conceptually.</p> <p>16 Q. Okay. Move to the next</p> <p>17 letter, February 2007. If you look at</p> <p>18 the bottom of Paragraph 3. It says,</p> <p>19 This responsibility is critical."</p> <p>20 Do you see that?</p> <p>21 A. No. Okay.</p> <p>22 Q. Okay. Start up at the top.</p> <p>23 Start up at the top under background. It</p> <p>24 says --</p>

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1 MR. BAKER: Go back.
2 BY MR. BAKER:
3 Q. All right. It says, "As
4 each of you is undoubtedly aware, the
5 abuse of controlled prescription drugs is
6 a serious and growing health problem in
7 the country"; is that correct?
8 A. That's what it states in the
9 letter, yes.
10 Q. Okay. Did you read this
11 while you were at CVS?
12 A. I can't --
13 MS. MILLER: Objection.
14 BY MR. BAKER:
15 Q. Yes or no?
16 MS. MILLER: Objection.
17 BY MR. BAKER:
18 Q. Did you read it?
19 MS. MILLER: Objection.
20 THE WITNESS: I don't
21 recall.
22 BY MR. BAKER:
23 Q. Okay. It talks about the
24 Controlled Substance Act in the next

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1 paragraph. Do you see that? "The CSA
2 was designed by Congress to combat
3 diversion by providing for a closed
4 system of drug distribution."
5 Do you see that?
6 A. Yes.
7 Q. Okay. Do you see at the
8 bottom it talks about, it says,
9 "Distributors are, of course, one of the
10 key components of this distribution
11 chain."
12 Do you see that?
13 A. No.
14 Q. Okay. Look in there where
15 it says that. Look, look where my finger
16 is. Do you see this? "Distributors are,
17 of course, one of the key components of
18 the distribution chain."
19 Do you see that?
20 A. I do see that.
21 Q. Okay. You were the director
22 of loss prevention logistics over a
23 distribution center that distributed
24 these narcotics, correct?

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1 MS. MILLER: Objection.
2 THE WITNESS: I stated that,
3 yes.
4 BY MR. BAKER:
5 Q. Okay. You were physically
6 located in Rhode Island, correct?
7 MS. MILLER: Objection.
8 THE WITNESS: Yes.
9 BY MR. BAKER:
10 Q. And the distribution centers
11 that were licensed to distribute these
12 narcotics for CVS were located in various
13 spots across the United States, which
14 we've gone over with you thus far in your
15 deposition, correct?
16 MS. MILLER: Objection.
17 THE WITNESS: That is
18 correct.
19 BY MR. BAKER:
20 Q. Okay. And you were the
21 director of logistics and loss prevention
22 over all of those distribution centers or
23 just the one in Rhode Island?
24 A. I had responsibility for the

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1 safety, security, quality in all the
2 distribution centers.
3 Q. Okay. And then it says,
4 "This responsibility is critical as
5 Congress has expressly declared that the
6 illegal distribution of controlled
7 substances has a substantial and
8 detrimental effect on the health and
9 general welfare of the American people."
10 Did I quote that correctly
11 from the letter?
12 A. It appears so.
13 Q. Okay. Did you read that
14 while you were employed at CVS and when
15 you were the director of logistics loss
16 prevention from 2005 to 2012?
17 MS. MILLER: Objection.
18 THE WITNESS: I don't recall
19 that language.
20 BY MR. BAKER:
21 Q. Okay. All right. Turn to
22 the February -- February 7, 2007 letter,
23 Page 3 where it talks about circumstances
24 that might be indicative of diversion.

<p style="text-align: right;">Page 86</p> <p>1 Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. One of the</p> <p>4 circumstances, it says, "Number 1,</p> <p>5 ordering excessive quantities of a</p> <p>6 limited variety of controlled substances,</p> <p>7 e.g., ordering only phentermine,</p> <p>8 hydrocodone, alprazolam."</p> <p>9 Do you see that?</p> <p>10 A. I do see that.</p> <p>11 Q. And hydrocodone is one of</p> <p>12 those products that was distributed out</p> <p>13 of the distribution centers by the CVS</p> <p>14 distribution centers to CVS pharmacies,</p> <p>15 correct?</p> <p>16 A. During the time I was there,</p> <p>17 yes.</p> <p>18 Q. Okay. And it says at the</p> <p>19 bottom, "Ordering the same controlled</p> <p>20 substance from multiple distributors."</p> <p>21 Do you see that?</p> <p>22 A. I do see that.</p> <p>23 Q. Okay. Do you remember the</p> <p>24 concept of outside vendors that I went</p>	<p style="text-align: right;">Page 88</p> <p>1 distribution centers at the store</p> <p>2 level.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. At any time when you were</p> <p>5 involved with suspicious order</p> <p>6 monitoring, did you attempt to monitor</p> <p>7 the purchase by CVS pharmacies of</p> <p>8 hydrocodone combination products from</p> <p>9 outside vendors, yes or no?</p> <p>10 A. I can't recall.</p> <p>11 Q. You can't recall. Is that</p> <p>12 something that you say you don't even</p> <p>13 remember doing, is that what you mean?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I guess I just</p> <p>16 can't recall.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Can you say you even did it?</p> <p>19 If you can't recall it, is it true that</p> <p>20 you can't say that you actually even did</p> <p>21 that, that you monitored outside vendor</p> <p>22 purchases by CVS pharmacies?</p> <p>23 MS. MILLER: Objection.</p> <p>24 BY MR. BAKER:</p>
<p style="text-align: right;">Page 87</p> <p>1 over with you earlier today, outside</p> <p>2 vendors?</p> <p>3 A. I can recall that term that</p> <p>4 you used, yes.</p> <p>5 Q. Okay. The hydrocodone</p> <p>6 combination products that were being</p> <p>7 distributed out of the CVS distribution</p> <p>8 centers to the CVS pharmacies, that was</p> <p>9 not the only source of hydrocodone</p> <p>10 combination products that were purchased</p> <p>11 by those CVS pharmacies, am I correct?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: I'm not sure.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Is it true that the CVS</p> <p>16 pharmacies that CVS distribution centers</p> <p>17 distributed to also purchased hydrocodone</p> <p>18 combination products from outside vendors</p> <p>19 in addition to purchasing them from CVS</p> <p>20 distribution centers?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: I'm not really</p> <p>23 familiar with the, I guess,</p> <p>24 purchasing outside of the</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Is that true?</p> <p>2 A. Just -- I apologize, I just</p> <p>3 don't remember.</p> <p>4 Q. Okay. If you don't remember</p> <p>5 then you can't say you actually did it</p> <p>6 either, can you?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: Just, I don't</p> <p>9 remember, sir.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Okay. Let's move forward.</p> <p>12 MR. BAKER: Pull Exhibit</p> <p>13 Number 18 please.</p> <p>14 (Document marked for</p> <p>15 identification as Exhibit</p> <p>16 CVS-Devlin-P-18.)</p> <p>17 BY MR. BAKER:</p> <p>18 Q. This is an e-mail from Todd</p> <p>19 Janson to Tom Mortelliti. And then if</p> <p>20 you look down below it it says from Amy</p> <p>21 Brown to various people, November 27,</p> <p>22 2007. Do you see that?</p> <p>23 A. I do see that.</p> <p>24 Q. Okay. And it says new Rx</p>

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1 DEA SOP. What does Rx DEA SOP mean to
2 you?
3 A. Pharmacy standard operating
4 procedures.
5 Q. Okay. So this discusses a
6 pharmacy standard operating procedure and
7 attached to it is a seventh draft updated
8 November 2007. Do you see that?
9 A. You're on the third page?
10 Q. Yes, sir.
11 A. Yes.
12 Q. Okay. Go back to the first
13 page, the e-mail at the bottom. It says,
14 "We are still in the process of writing
15 the suspicious order monitoring section
16 of the SOP."
17 Do you see that?
18 A. I do.
19 Q. Okay. Let me ask you, are
20 you familiar with any written suspicious
21 order monitoring policy and procedure
22 that existed within the SOP at CVS before
23 this draft?
24 MS. MILLER: Objection.

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1 THE WITNESS: Again, as I
2 testified earlier, not necessarily
3 an SOP, but I believe there were
4 some processes in place that could
5 be related to suspicious order
6 monitoring.
7 BY MR. BAKER:
8 Q. Okay. This draft that we
9 are talking about did not include a
10 suspicious order monitoring standard
11 operating procedure, did it?
12 A. I'd have to look --
13 MS. MILLER: Do you want a
14 chance to look at the document?
15 THE WITNESS: Yeah, I --
16 BY MR. BAKER:
17 Q. That's what the document
18 says, the very first page, correct?
19 A. Right. But I haven't read
20 the document.
21 Q. Okay. I'm going to move
22 forward, because we're -- we have limited
23 time, okay.
24 This next document is

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1 Number 57.
2 (Document marked for
3 identification as Exhibit
4 CVS-Devlin-P-57.)
5 BY MR. BAKER:
6 Q. All right. This is an
7 e-mail from Amy Propatier. Now, you know
8 her, do you not?
9 A. Yes.
10 Q. Okay. And it's dated
11 April 3, 2009. And it says, "Good
12 morning. Attached is the DEA SOP which
13 was implemented in December 2007."
14 All right. Stop right
15 there. All right. Is it true that to
16 your recollection that DEA SOP that I
17 handed you, which is Exhibit 18, was
18 implemented in December of 2007?
19 A. Again, I would need a chance
20 to read it.
21 Q. Okay. It says, "We have
22 made some recent updates to the SOP.
23 Please note that we have updated the
24 record retention period from five years

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1 to two years. Also, the SOM section is
2 still not included in the SOP in the
3 event of an audit and the question comes
4 up, please direct them to corporate,
5 Frank or myself for the explanation of
6 the program."
7 Now let me ask you about
8 that.
9 It says, "Also the SOM
10 section is still not included in the
11 SOP."
12 Do you know what that means?
13 A. Just I don't recall this
14 e-mail.
15 Q. Okay. And do you know who
16 she is referring to? Is she referring to
17 you, Frank Devlin? Is that the point of
18 contact if the -- if somebody questioned
19 this SOP in the context of a DEA audit,
20 they should contact you?
21 MS. MILLER: Objection.
22 THE WITNESS: If there was a
23 DEA audit I may be contacted.
24 BY MR. BAKER:

<p style="text-align: right;">Page 94</p> <p>1 Q. Okay. Are you the Frank 2 that's referred to in this e-mail, do you 3 know? 4 A. I can't say 100 percent. 5 Q. Okay. Would you say more 6 likely than not based upon the context of 7 the e-mail, that you're that Frank? 8 A. It could be in reference to 9 me, yes. 10 Q. Okay. Amy Propatier at the 11 time, what was her title, do you know? 12 A. I know she worked in the 13 logistics department. 14 Q. Okay. Do you know that -- 15 that -- are you aware of the term "DEA 16 compliance coordinator"? 17 A. I've heard the term. 18 Q. Did you know whether or not 19 that's what she was considered to be at 20 CVS? 21 MS. MILLER: Objection. 22 THE WITNESS: I don't recall 23 her exact title. 24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 96</p> <p>1 recall the exact positions. 2 MR. BAKER: Okay. Let's 3 move forward. Go to Exhibit 94. 4 (Document marked for 5 identification as Exhibit 6 CVS-Devlin-P-94.) 7 BY MR. BAKER: 8 Q. Do you recall that with 9 respect to the 2009 SOP in relation to 10 the suspicious order monitoring, was it 11 still not defined at the time -- at the 12 time that it was revised in December of 13 2009? Do you recall that one way or the 14 other? 15 MS. MILLER: Objection. 16 THE WITNESS: Do you have 17 something that I'm supposed to be 18 looking at? 19 BY MR. BAKER: 20 Q. Sure. I'll let you look at 21 Exhibit 48. We'll go back to that. 22 (Document marked for 23 identification as Exhibit 24 CVS-Devlin-P-48.)</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Okay. If the DEA had walked 2 in and asked you in 2009 who is the DEA 3 compliance coordinator, who would you 4 have said that would have been? 5 A. If they walked into where? 6 Q. To your office in Rhode 7 Island. 8 A. I'm not sure. 9 Q. Okay. Was there a DEA 10 compliance coordinator in 2009 when you 11 were employed there? 12 A. I'm just -- I mean there are 13 people involved with DEA. I'm just -- I 14 just don't recall the exact titles. 15 Q. Okay. Let me ask you 16 something. Was there a DEA compliance 17 coordinator? Was there somebody that had 18 the title DEA compliance coordinator when 19 you were employed there in 2009 at CVS? 20 MS. MILLER: Objection. 21 Asked and answered. 22 BY MR. BAKER: 23 Q. Was there such a position? 24 A. Again, I just -- I don't</p>	<p style="text-align: right;">Page 97</p> <p>1 MS. MILLER: So we're not 2 using 94? 3 MR. BAKER: No, we're not. 4 We're using 48 again. 5 BY MR. BAKER: 6 Q. I want you to go to -- look 7 here. At the bottom, it's Roman Numeral 8 VIII-VI. The Bates number is 24916. 9 Do you see that? 10 A. 24916? 11 Q. At the bottom -- 12 A. Yes. 13 Q. -- where your right hand is. 14 MS. MILLER: It's flagged 15 also. 16 BY MR. BAKER: 17 Q. You have it flagged. Okay. 18 Do you see where it says 19 suspicious order monitoring? 20 Do you see that? 21 A. Yes. 22 Q. Okay. So what it says on 23 the next page, it says, "These parameters 24 are documented in SOP" -- and there's a</p>

<p style="text-align: right;">Page 98</p> <p>1 blank. "Ordering quantity parameters for 2 controlled drugs, being developed and 3 written." 4 Do you see that? 5 A. I do see that. 6 Q. Okay. Does that mean it's 7 incomplete at this point, at least from 8 the standpoint of it's being developed 9 and written? Is that what that means? 10 MS. MILLER: Objection. 11 THE WITNESS: I'm not sure 12 what it means. 13 BY MR. BAKER: 14 Q. Were you involved in this 15 process at all of drafting? 16 A. I would have been involved 17 to some extent. 18 Q. Okay. Of drafting the 19 suspicious order monitoring policy and 20 procedure, would you have been involved 21 in that? 22 A. I would have been involved, 23 yes. 24 Q. Okay. But this revision</p>	<p style="text-align: right;">Page 100</p> <p>1 showed you in that series of three 2 letters was received by CVS from the DEA 3 from Mr. Rannazzisi, correct? 4 MS. MILLER: Objection. 5 BY MR. BAKER: 6 Q. Do you remember the 7 February 2007 letters? 8 A. Again, I don't recall when 9 I -- when I actually saw the letter. 10 Q. Okay. So at this point, 11 we're now 12/11 of 2009. And there's 12 still no written policy and procedure for 13 suspicious order monitoring at CVS 14 because it's still being developed and 15 written; is that correct? 16 MS. MILLER: Objection. 17 THE WITNESS: Again, I'd 18 want to read through the document. 19 BY MR. BAKER: 20 Q. At least that's what the 21 document says; is that right? 22 MS. MILLER: Objection. 23 THE WITNESS: I haven't read 24 the document.</p>
<p style="text-align: right;">Page 99</p> <p>1 date is dated 12/11/09. That's the first 2 page, correct? Go back, at the top -- up 3 here. Upper right-hand corner. 4 A. Yeah, appears to be. 5 Q. Okay. And this is a 6 continuation of the one that was first 7 effectively published in the 8 suspicious -- in the SOP 12/1 of '07 9 that's being updated 12/11/09; is that 10 correct? 11 A. Again, I'm -- you know, as 12 far as the dates go. 13 Q. Well, just -- I mean, just 14 isn't that what it says? 15 A. That's what the document 16 says. 17 Q. Okay. The document says the 18 effective date of the initial controlled 19 drug DEA standard operating procedure 20 manual was 12/1 of '07, correct? 21 A. That's what the document 22 says. 23 Q. All right. And that's about 24 ten months after that last letter that I</p>	<p style="text-align: right;">Page 101</p> <p>1 BY MR. BAKER: 2 Q. Okay. Let's go back to the 3 document again. Go back to where I had 4 you tabbed. And it says, "These 5 parameters are documented in SOP" -- 6 blank -- "order quantity parameters for 7 controlled drugs, being developed and 8 written." 9 That's what it says, right? 10 A. Are you on 24916 Bates 11 number? 12 Q. Yes, sir. 24917. Do you 13 see it? 14 A. I do see it. 15 Q. Okay. That's what the 16 document states, correct? 17 A. That's what the document 18 states. 19 Q. Let's move on. Let's go to 20 Exhibit 94. All right. This is an 21 e-mail dated 11/5 of 2009. It says from 22 John Mortelliti to Christopher Knight. 23 It says, "Sounds good. I'm trying to get 24 a rough draft SOM SOP to you prior to the</p>

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<p>1 meeting. This is a big issue with CVS 2 and the DEA." 3 Now, did I read that 4 correctly? 5 A. That's what it states, yes. 6 Q. And you said you were 7 involved somewhat with the drafting of 8 the SOM SOP, correct? 9 A. I was involved in the 10 drafting of the DEA SOPs. 11 Q. Is that a yes? 12 MS. MILLER: Objection. 13 THE WITNESS: I was 14 involved. 15 BY MR. BAKER: 16 Q. Okay. You were. Okay. Was 17 that a big issue with CVS and the DEA? 18 Is that accurate? 19 A. I don't recall that. 20 Q. Okay. Let's move to the 21 next exhibit, Number 98. 22 (Document marked for 23 identification as Exhibit 24 CVS-Devlin-P-98.)</p>	<p>1 department at CVS corporate headquarters. 2 Q. Okay. So it says, "Good 3 morning, Amy. I attached the PSE SOP to 4 this e-mail. The control drug SOP is 5 being reviewed by counsel. I hope to 6 receive it back today." 7 So at this point 8/23/10, is 8 there still no control drug SOP in 9 existence at CVS? 10 MS. MILLER: Objection. 11 THE WITNESS: That's what it 12 states in the e-mail. 13 BY MR. BAKER: 14 Q. Okay. And at the bottom, it 15 says, "From Frank Devlin." This is you 16 who generated this e-mail, August 23, 17 2010, to John Mortelliti copying Amy 18 Propatier. Subject, "DEA SOP." 19 What is the DEA SOP that 20 you're referring to? 21 A. The DEA standard operating 22 procedure. 23 Q. To include that suspicious 24 order monitoring paragraph to finish it</p>
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<p>1 BY MR. BAKER: 2 Q. This is an e-mail dated 8/23 3 of 2010 from John Mortelliti to Amy 4 Propatier with you -- actually to you, 5 Frank Devlin, correct? John Mortelliti 6 to Frank Devlin? 7 A. That's what it states, yes. 8 Q. 8/23/2010; is that correct? 9 A. That's what it states, yes. 10 Q. Mr. Mortelliti was who at 11 that time in reference to his job at CVS? 12 A. I believe at that time he 13 would have been a director in -- director 14 of logistics, loss prevention. 15 Q. What office was he located 16 within? 17 A. At that time he would have 18 been based out of the Lumberton 19 distribution center. 20 Q. Okay. And this is to Amy 21 Propatier, who copied her. Who was she 22 at that time, to your knowledge, in 23 reference to her job at CVS? 24 A. She worked in the logistics</p>	<p>1 up? 2 MS. MILLER: Objection. 3 BY MR. BAKER: 4 Q. Is that part of what you 5 were trying to finish up? 6 MS. MILLER: Objection. 7 THE WITNESS: I'm just -- in 8 reading the e-mail, I mean, I can 9 read the e-mail. I don't -- 10 BY MR. BAKER: 11 Q. Okay. We'll go through it. 12 A. I don't recall writing this 13 e-mail. 14 Q. Okay. Did you write this 15 e-mail? 16 A. Just I -- it has my name on 17 it. I do not recall writing the e-mail. 18 Q. All right. If it has your 19 name on it as "from," does that generally 20 mean that you wrote it? 21 MS. MILLER: Objection. 22 BY MR. BAKER: 23 Q. Yes? 24 A. It appears that I wrote the</p>

<p style="text-align: right;">Page 106</p> <p>1 e-mail.</p> <p>2 Q. Okay. So it says, "Good</p> <p>3 morning, John." And this is to John</p> <p>4 Mortelliti in Lumberton, New Jersey,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. It says, "Can you</p> <p>8 work with Amy to get the PSE IRR and</p> <p>9 control drug IRR inserted into our DEA</p> <p>10 SOP under suspicious order monitoring?</p> <p>11 We promised this to the DEA by</p> <p>12 Wednesday."</p> <p>13 Did I quote that correctly?</p> <p>14 A. That's what it states.</p> <p>15 Q. Okay. It says, "Can you get</p> <p>16 with Amy to get the PSE IRR" --</p> <p>17 That's a chemical IRR,</p> <p>18 correct?</p> <p>19 A. Pseudoephedrine.</p> <p>20 Q. Okay. IRR is item review</p> <p>21 report; is that right?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Okay.</p> <p>24 -- "and the control drug</p>	<p style="text-align: right;">Page 108</p> <p>1 the same week, that this is Monday,</p> <p>2 August 23, correct?</p> <p>3 A. That's what the date states,</p> <p>4 yes.</p> <p>5 Q. And Wednesday would be</p> <p>6 August 25, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And are you aware that the</p> <p>9 DEA was doing an inspection of the</p> <p>10 Indianapolis distribution center</p> <p>11 August 25 of 2010?</p> <p>12 A. Yeah, just I -- I just don't</p> <p>13 recall the exact date of DEA inspections.</p> <p>14 Q. Was it your intent to try to</p> <p>15 get the suspicious order monitoring</p> <p>16 policy and procedure inserted into the</p> <p>17 standard operating procedure manual of</p> <p>18 CVS before the DEA arrived August 25 of</p> <p>19 2010?</p> <p>20 MS. MILLER: Objection.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Was it your intent to do</p> <p>24 that?</p>
<p style="text-align: right;">Page 107</p> <p>1 IRR" -- that's an item review report?</p> <p>2 A. For control drugs, yes.</p> <p>3 Q. Okay.</p> <p>4 -- "inserted into our DEA</p> <p>5 SOP under suspicious order monitoring."</p> <p>6 Correct?</p> <p>7 A. That's what it states.</p> <p>8 Q. Okay. Is it true at this</p> <p>9 time, August 23, 2010, that you were</p> <p>10 working with these people to try to get a</p> <p>11 suspicious order monitoring SOP together?</p> <p>12 MS. MILLER: Objection.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. A written one?</p> <p>15 A. You know, I just -- again, I</p> <p>16 can't recall the exact dates, you know,</p> <p>17 around SOP. I know there were, you know,</p> <p>18 drafts being worked on. But I -- I also</p> <p>19 know that there was -- there was an</p> <p>20 ongoing SO -- there was an ongoing SOM</p> <p>21 process taking place.</p> <p>22 Q. Okay. It says, "We promised</p> <p>23 this to the DEA by Wednesday."</p> <p>24 Now, you're talking about</p>	<p style="text-align: right;">Page 109</p> <p>1 MS. MILLER: Give me a</p> <p>2 chance to object. Objection.</p> <p>3 THE WITNESS: I just -- I</p> <p>4 don't recall that.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. Was it your intent to try to</p> <p>7 show it to the DEA as being in existence</p> <p>8 as a policy and procedure of CVS while</p> <p>9 they were at the Indiana facility doing</p> <p>10 an inspection in August 25 of 2010?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I don't -- I</p> <p>13 don't recall a particular</p> <p>14 instance.</p> <p>15 MR. BAKER: Could you pull</p> <p>16 Number 70, please.</p> <p>17 (Document marked for</p> <p>18 identification as Exhibit</p> <p>19 CVS-Devlin-P-70.)</p> <p>20 BY MR. BAKER:</p> <p>21 Q. I'm showing you an e-mail</p> <p>22 dated August 25, 2010, from Henry</p> <p>23 Mortelliti to Greg Brantley copied to</p> <p>24 Francis Devlin. That's you, Frank</p>

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1 Devlin, correct?
2 A. Yes.
3 Q. Okay. Dated 8/25/2010.
4 It's called, "Controlled drug IRR Draft 3
5 document."
6 Is that what it's called?
7 A. That's what it states, yes.
8 Q. And it says, this -- "Greg,
9 this needs to be implemented as soon as
10 possible in your area." Is that right?
11 A. That's what the e-mail
12 states, yes.
13 Q. Okay. And it's referencing
14 the control drug IRR, which is the item
15 review report, correct?
16 MS. MILLER: Objection.
17 BY MR. BAKER:
18 Q. Is that what it's
19 referencing?
20 A. I'm not seeing -- oh, in the
21 subject line?
22 Q. Yes. Attachment, control
23 drug IRR?
24 A. IRR SOP. That's what it

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1 states, yes.
2 Q. Do you see that?
3 A. I do see that.
4 Q. Okay. Look at the
5 attachment. It says, "Control drug
6 IRR" -- control drug inventory review
7 report policy, prevention and monitoring
8 of control drug suspicious orders.
9 A. It's on the second page?
10 Q. Yes, sir.
11 A. Yes.
12 Q. Okay. Under general. Bold
13 all that paragraph. Highlight it. It
14 says, "DEA regulations require that all
15 distributors must design a system to
16 monitor, detect and report any suspicious
17 control drug orders. Suspicious orders
18 are those involving an extraordinary
19 quantity, an uncommon method of payment
20 or delivery, or any other circumstances
21 that may indicate that the control drug
22 will be used in violation of the law.
23 All CVS distribution centers, DCs, must
24 follow these procedures to comply with

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1 this requirement."
2 Is that what it says?
3 A. That is what it states, yes.
4 Q. Okay. And it talks about
5 the item review report under
6 Subparagraph B. If you go down, it says,
7 "Items reviewed. CVS has established the
8 control drug order thresholds which will
9 flag on the IRR, item review report, as
10 well as field loss prevention NovaStor
11 loss prevention software reports"; is
12 that correct?
13 A. Where -- where are you now?
14 Q. If you look at your screen,
15 it's right --
16 A. I'm having trouble reading
17 the screen.
18 Q. Okay.
19 MS. MILLER: Bill, it's
20 easier for him to work off of the
21 hardcopy --
22 BY MR. BAKER:
23 Q. I'm under Paragraph B,
24 Paragraph B?

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1 A. B as-in-boy?
2 Q. Yes.
3 A. Okay.
4 Q. Do you see it, items
5 reviewed?
6 A. Yes.
7 Q. Okay. Did I quote that
8 correctly?
9 "CVS has established control
10 drug order thresholds which will flag on
11 the IRR."
12 A. Yes.
13 Q. "As well as field loss
14 prevention NovaStar reports"; is that
15 correct?
16 A. Yes.
17 Q. It says, "These thresholds
18 are the primary tool to prevent stores
19 from purchasing excessive or potentially
20 suspicious control drug orders," correct?
21 A. That's what it states.
22 Q. It says, "These thresholds
23 are based on historic trends of sales,"
24 correct?

<p style="text-align: right;">Page 114</p> <p>1 A. That's what it states. 2 Q. It says, "Stores may order 3 more than the historical average; 4 however, the DC may not ship amounts that 5 exceed these thresholds if it is believed 6 to be suspicious," correct? 7 A. That's what it states. 8 Q. All right. And this was the 9 control drug IRR policy that's being 10 referred to in this e-mail as being in 11 need of being implemented as soon as 12 possible in your area, correct? 13 A. Yeah, again, I -- before we 14 believed this activity was taking place, 15 it was more of a finalizing an SOP. 16 Q. Okay. So let's go to 17 Exhibit Number 97. 18 (Document marked for 19 identification as Exhibit 20 CVS-Devlin-P-97.) 21 BY MR. BAKER: 22 Q. All right. Exhibit 23 Number 97 is the DEA SOP 8/25 of 2010 in 24 an e-mail from Amy Propatier on the cover</p>	<p style="text-align: right;">Page 116</p> <p>1 A. I remember reading that, 2 yes. 3 Q. Okay. So now, we are on 4 8/26, and it says, "Could you please 5 post? We added the suspicious order 6 monitoring." 7 Do you see that? 8 A. I don't see 8/26. 9 Q. Okay. Look -- look. 10 Actually do you see -- actually 11 8/25/2010. Do you see that? 12 A. I do see 8/25. 13 Q. All right. This is sent on 14 8/26/2010. Do you see that? 15 A. Okay. Yes. 16 Q. Okay. It says, "Can you 17 please post? We added the suspicious 18 order monitoring." 19 Do you see that? 20 A. I do see that. 21 Q. Okay. Is this the first 22 time that the suspicious order monitoring 23 was added to the SOP at CVS? 24 MS. MILLER: Objection.</p>
<p style="text-align: right;">Page 115</p> <p>1 of that. It's dated 8/26/2010; is that 2 correct? 3 A. Excuse me. Yes, that's what 4 it states. 5 Q. Okay. So it says from Amy 6 Propatier to Annette Lamoureux. Do you 7 know who Annette Lamoureux was? 8 A. I believe she worked in the 9 Woonsocket distribution center. 10 Q. Okay. And Amy Propatier 11 also worked in the Woonsocket 12 distribution center; is that correct? 13 MS. MILLER: Objection. 14 BY MR. BAKER: 15 Q. Corporate office. 16 She worked in the corporate 17 office; is that correct? 18 A. She worked in the corporate 19 office, yes. 20 Q. Okay. So according to this 21 e-mail as a follow-up to the one that was 22 8/23, remember that one? "I'm trying to 23 get this inserted by Wednesday." 24 Do you remember that?</p>	<p style="text-align: right;">Page 117</p> <p>1 BY MR. BAKER: 2 Q. Is this the first time that 3 the suspicious order monitoring policy 4 and procedure in its completed form was 5 added to the -- the standard operating 6 procedure manual at CVS? 7 A. Based on the e-mail that 8 appears to be so. But again, I'm very 9 confident that the -- there was a process 10 that was taking place. 11 Q. You are confident that there 12 was a process taking place. 13 A. I know there was. 14 Q. Okay. Let me -- let me talk 15 about that. There was no written policy 16 and procedure with respect to suspicious 17 order monitoring before 8/25 of 2010, 18 according to the documentation that I've 19 shown you today, correct? 20 MS. MILLER: Objection. 21 BY MR. BAKER: 22 Q. Correct? 23 A. Again, I -- I can't recall 24 on the documentation which I have not</p>

<p style="text-align: right;">Page 118</p> <p>1 read through. That's based on the 2 documentation and not having read through 3 it and the dates, again I don't know the 4 exact date that it was actually put in 5 the SOP. 6 Q. Well, it says it right here, 7 Mr. Devlin. I mean it says, "Could you 8 please post, we added the SOM." It's 9 dated 8/25/2010. And you have Amy 10 Propatier sending the e-mail 8/26/10. Is 11 that not clear as crystal to you? 12 A. I under -- 13 MS. MILLER: Objection. 14 THE WITNESS: I understand 15 that based on the e-mail. 16 BY MR. BAKER: 17 Q. Okay. Based upon the 18 e-mail, based upon the documentation, 19 based upon the exhibits that I've shown 20 you today, is it true that, to your 21 knowledge, that's the first time that CVS 22 inserted a suspicious order monitoring 23 policy and procedure into their standard 24 operating procedure, yes or no?</p>	<p style="text-align: right;">Page 120</p> <p>1 MS. MILLER: Bill, you mean 2 97? 3 BY MR. BAKER: 4 Q. Excuse me. We're back on 5 the record and looking at Exhibit 97, 6 which was the 8/25/10 control drug DEA 7 standard operating procedures manual at 8 CVS distribution center, correct? 9 A. Yes. 10 Q. I want you to turn to page, 11 Roman Numeral VII-7. And it talks about 12 the item review report, Paragraph Number 13 4. Do you see here? The item review 14 report? 15 MS. MILLER: Do you mean 16 Roman Numeral VIII-7? 17 BY MR. BAKER: 18 Q. Right. Roman Numeral 19 VIII-7, Numeral 4, item review report? 20 Do you see that? 21 A. I do. 22 Q. It says, "Currently the item 23 review report for control drugs is being 24 reviewed at a central location in New</p>
<p style="text-align: right;">Page 119</p> <p>1 MS. MILLER: Objection. 2 Asked and answered. 3 THE WITNESS: Again, on the 4 e-mails that you're showing me, 5 you could state that. Again, I 6 just -- I can't recall if that is 7 in fact the date. 8 MR. BAKER: Okay. I've been 9 going about an hour and a half 10 myself. And I have not taken a 11 break. So I'm going to take about 12 a five-minute break. 13 THE VIDEOGRAPHER: We're 14 going off the record. The time is 15 10:09. 16 (Short break.) 17 THE VIDEOGRAPHER: We are 18 going back on record. Beginning 19 of Media File 3. The time is 20 10:20. 21 BY MR. BAKER: 22 Q. Okay. We're back on the 23 record looking at Exhibit Number 87, 24 which was the --</p>	<p style="text-align: right;">Page 121</p> <p>1 Jersey." Is that correct? 2 A. That's what it states. 3 Q. Okay. That's where Frank 4 Mortelliti was located, correct? 5 A. No. 6 Q. Where was -- that's where -- 7 who was Mortelliti? What's his first 8 name? 9 A. His name is John. 10 Q. John Mortelliti. Okay. 11 You're Frank Devlin. That's where John 12 Mortelliti was located, correct? 13 A. Correct. 14 Q. Was he the one doing the 15 item review report review at that time? 16 A. John was definitely involved 17 in the item review report. As far as 18 exact time frames and whatnot, I -- I 19 can't recall. 20 Q. Okay. If this says that 21 that's what he was doing, do you have any 22 reason to doubt that this is accurate, 23 8/25 of 2010? 24 MS. MILLER: Objection.</p>

<p style="text-align: right;">Page 122</p> <p>1 BY MR. BAKER: 2 Q. She objected. So let's look 3 at the page. Look at the first page of 4 this. It's 8/25/10. That's the date on 5 this SOP; is that correct? 6 A. That is correct. 7 Q. Okay. And inside this SOP 8 that's dated 8/25/10, did I read this 9 correctly? "Currently the item review 10 report for controlled drugs is being 11 reviewed in a central location in New 12 Jersey." 13 Did I read that correct? 14 A. You read that correctly. 15 Q. Okay. And was 16 Mr. Mortelliti the one that was doing 17 that item review report in New Jersey? 18 A. Based on this document, yes. 19 Q. Okay. And do you have any 20 reason to doubt that this document is 21 accurate? 22 A. No. I'm not doubting the 23 accuracy of the document. Again, I 24 just -- I can't recall the exact time</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. It says, "The director of 2 logistics, loss prevention, will be the 3 only representative of CVS contacting the 4 DEA." Correct? 5 A. That's what it states. 6 Q. Okay. Now, you were in a 7 position of authority at CVS with respect 8 to being the liaison or the contact 9 person between CVS and the DEA according 10 to this SOP; is that correct? 11 A. Yes. 12 Q. Okay. 13 A. From an SOP standpoint and 14 I -- I would have other people involved 15 also. 16 Q. Okay. But in terms of 17 having direct contact with the DEA, this 18 SOP lists you as the only representative 19 of CVS that shall contact the DEA -- DEA, 20 correct? 21 A. That's what this version 22 states. I mean, the process did -- did 23 evolve. And again, I can't recall the 24 dates. But I did get other people</p>
<p style="text-align: right;">Page 123</p> <p>1 frames he was reviewing and not 2 reviewing. 3 Q. Was he doing this by himself 4 in New Jersey, to your knowledge? 5 MS. MILLER: Objection. 6 BY MR. BAKER: 7 Q. Let me restate the question. 8 Who, if anybody, was assisting 9 Mr. Mortelliti in New Jersey with respect 10 to this item review report? 11 A. I know Mr. Mortelliti was 12 involved in the process. And he may have 13 had, you know, one of his supervisors 14 working for him involved. But I just -- 15 I can't say for sure. 16 Q. All right. Turn to the next 17 page. Under Paragraph 7, reports to the 18 DEA, it says, "All investigations 19 resulting in a confirmed suspicious order 20 must be reported to the director of 21 logistics, loss prevention, Frank 22 Devlin." 23 That's you, correct? 24 A. Correct.</p>	<p style="text-align: right;">Page 125</p> <p>1 involved in contacting the DEA. 2 Q. Okay. 3 A. But I would -- I would be 4 aware of it. 5 Q. All right. With respect to 6 this item review report that was being 7 reviewed by Mr. Mortelliti in Lumberton, 8 New Jersey, was he reviewing the totality 9 of all item review reports for all CVS 10 distribution centers throughout the 11 United States? 12 A. Again, I can't recall exact 13 times, but there were periods of time, 14 that, yes, that would be the case. 15 Q. Okay. And when he was doing 16 that, was he reviewing the item review 17 reports that pertained to control drugs 18 being supplied out of the distribution 19 centers to CVS pharmacies? 20 A. Yes. 21 Q. Okay. Would that include 22 narcotics that we talked about, 23 hydrocodone combination products? 24 MS. MILLER: Objection.</p>

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1 THE WITNESS: Yes, I believe
2 at that time hydrocodone products
3 were -- would have been involved,
4 yes.
5 BY MR. BAKER:
6 Q. Okay. You know hydrocodone
7 combination products are narcotics. I
8 showed you the drug fact sheets on that,
9 correct?
10 MS. MILLER: Objection.
11 BY MR. BAKER:
12 Q. You know that, don't you?
13 MS. MILLER: Objection.
14 THE WITNESS: After reading
15 the -- you know, according to that
16 fact sheet, that's what it's
17 classified as.
18 BY MR. BAKER:
19 Q. And you know they're
20 opioids, correct?
21 MS. MILLER: Objection.
22 THE WITNESS: I mean --
23 BY MR. BAKER:
24 Q. I mean, that's what it said.

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1 You just read it.
2 MS. MILLER: Objection.
3 THE WITNESS: Well, again,
4 according to the sheet you sent
5 me, yes.
6 BY MR. BAKER:
7 Q. Well, listen, what color is
8 that pen right there?
9 MS. MILLER: Objection.
10 BY MR. BAKER:
11 Q. What color is it?
12 MS. MILLER: Objection.
13 THE WITNESS: You're not
14 going to buy this, but I am
15 color-blind.
16 BY MR. BAKER:
17 Q. Okay. Well, what's in this
18 glass right here?
19 MS. MILLER: Objection.
20 BY MR. BAKER:
21 Q. Does it look like water?
22 MS. MILLER: Mr. Baker.
23 BY MR. BAKER:
24 Q. See, I want to ask direct

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1 questions and get direct answers. But
2 every time I ask you a question, you kind
3 of, well, I don't remember, this, that.
4 I just want to know what the facts are.
5 Okay. And I don't want to dance around
6 with you with questions and answers. I
7 just want to know the facts. Okay. And
8 I'm not trying to ask you trick
9 questions.
10 So if you can answer my
11 questions directly, we can get through
12 this much smoother than what you're
13 allowing. Okay?
14 MS. MILLER: Bill, he's
15 answering your questions.
16 BY MR. BAKER:
17 Q. So let me -- let me repeat
18 the question. Let's go back.
19 A. My -- my intention is to
20 answer your question, sir.
21 Q. Okay. You know, you know
22 that hydrocodone combination products are
23 opioids, correct?
24 MS. MILLER: Objection.

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1 Asked and answered.
2 THE WITNESS: According to
3 the sheet you provided me, that's
4 what it states.
5 BY MR. BAKER:
6 Q. Okay. Did you know that a
7 hydrocodone combination product was an
8 opioid when you worked at CVS?
9 A. I -- as I previously
10 testified, I would refer to it as a
11 control drug.
12 Q. Okay. Did you know it was
13 an opioid?
14 A. No.
15 Q. Okay. When Mr. Mortelliti
16 was in Lumberton, New Jersey, reviewing
17 these item review reports, how many
18 pharmacies was he reviewing them for?
19 MS. MILLER: Objection.
20 THE WITNESS: It would be
21 based on from when John was
22 reviewing it, based on how many
23 pharmacies were operating at that
24 time.

<p style="text-align: right;">Page 130</p> <p>1 BY MR. BAKER: 2 Q. Approximately how many 3 pharmacies were operating in August of 4 2010 to the best of your recollection, 5 how many CVS pharmacies were in operation 6 at that time? 7 A. I think there could have 8 been maybe eight or nine. 9 Q. That's distribution centers. 10 A. I'm sorry, can you repeat 11 the question? 12 Q. Okay. There might have been 13 eight or nine distribution centers; is 14 that right? 15 A. I'm sorry, I thought that's 16 what you were asking me. 17 Q. Okay. So let's ask that. 18 How many distribution centers were in 19 operation at that time that distributed 20 control drugs from CVS distribution 21 centers to CVS pharmacies? 22 A. It may have been around 23 eight or nine distribution centers. 24 Q. Okay. And those eight or</p>	<p style="text-align: right;">Page 132</p> <p>1 BY MR. BAKER: 2 Q. All right. She objected, so 3 I'm going to have to restate the question 4 until that stops. Okay? 5 A. Sure. 6 Q. So what was your involvement 7 with suspicious order monitoring with 8 respect to logistics loss prevention in 9 your position at that time? 10 A. I was involved in -- I was 11 involved in the suspicious order 12 monitoring process, and I'd say, you 13 know, more from an almost program manager 14 standpoint. 15 Q. Okay. 16 A. Ensuring that, you know, 17 the -- the process was taking place and 18 we were -- we had an ongoing process in 19 place. 20 Q. Okay. And over 21 approximately -- using your best estimate 22 in that position, approximately how many 23 CVS pharmacies were these distribution 24 centers distributing to throughout the</p>
<p style="text-align: right;">Page 131</p> <p>1 nine distribution centers, to how many 2 total approximate CVS pharmacies did they 3 distribute Schedule III controlled 4 substances? 5 A. Again, I would have to look 6 at a store count, because, you know, CVS 7 over the years had, you know, 8 acquisitions and mergers, and so maybe in 9 2010 there was around 4,000. Best guess. 10 I'm not sure on that. 11 Q. Okay. Based upon your 12 knowledge without guessing, would 4,000 13 be about an accurate estimate? 14 MS. MILLER: Objection. 15 THE WITNESS: I would say it 16 could be in the ballpark. 17 BY MR. BAKER: 18 Q. Okay. And that's because 19 you were director of loss prevention 20 logistics and you were involved in the 21 suspicious order monitoring process; is 22 that right? 23 MS. MILLER: Objection. 24 THE WITNESS: I was --</p>	<p style="text-align: right;">Page 133</p> <p>1 United States at that time in August of 2 2010 approximately? 3 A. Again, I gave a ballpark 4 number of maybe around 4,000. 5 Q. Okay. And was 6 Mr. Mortelliti doing the reviews for the 7 supply of opioids from those distribution 8 centers to those pharmacies? 9 MS. MILLER: Objection. 10 THE WITNESS: You know, 11 again during that time frame, 12 that's not the terminology I -- I 13 would use. I would use control 14 drugs. 15 BY MR. BAKER: 16 Q. Okay. Let's use your 17 terminology. Was Mr. Mortelliti doing 18 the item review reports -- was he 19 reviewing the item review reports on 20 behalf of CVS for all of the distribution 21 of controlled substances out of CVS 22 distribution centers to CVS pharmacies 23 nationwide? 24 A. There were various points in</p>

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1 times, yes, he was doing that.
2 Q. Okay. And when he was doing
3 it, how many item review reports was he
4 reviewing per day on average?
5 MS. MILLER: Objection.
6 THE WITNESS: I can't
7 recall.
8 BY MR. BAKER:
9 Q. When he was doing that, how
10 much time was he spending reviewing the
11 item review reports per day for all of
12 those distribution centers' transactions
13 with respect to controlled substances
14 from the distribution centers to the CVS
15 pharmacies nationwide?
16 A. I can't recall a specific
17 amount of time. But I -- I know a -- I
18 know there was a significant amount of
19 his day was spent doing that.
20 Q. And do you know how much
21 time he spent reviewing each item review
22 report on each transaction of controlled
23 substances that was generated from a CVS
24 distribution center to a CVS pharmacy?

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1 A. I do not.
2 Q. At the time of the initial
3 rollout of these -- this policy, was it
4 your intent to do this on a DC,
5 distribution center to distribution
6 center basis, or was it intent -- was it
7 your intent to have it all centralized
8 into one location?
9 MS. MILLER: Objection.
10 BY MR. BAKER:
11 Q. There was an objection.
12 What was your intent with
13 respect to how the suspicious order
14 monitoring IRR review was to be done with
15 respect to whether it, on the one hand,
16 could be done centrally in one location
17 as opposed to, on the other hand, be done
18 in various distribution centers?
19 A. Are you asking a specific
20 time or?
21 Q. Yes. In 2010 when this
22 rolled out.
23 A. You know, I think the -- the
24 program itself, it was an evolving

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1 program. And again, I can't recall exact
2 dates, but I do recall, you know,
3 initially, from a central standpoint, and
4 I recall looking at having individual
5 distribution centers doing it, and then
6 maybe more going back to a centralized
7 process.
8 Q. Okay. At first it was
9 centralized in Lumberton, New Jersey,
10 according to this document; is that
11 correct?
12 A. That's what the document
13 states, yes.
14 Q. Okay. And when -- when you
15 had -- when you were involved with
16 knowing that this SOM was inserted into
17 this SOP 8/25/10, were there some DEA
18 talking points developed?
19 MS. MILLER: Objection.
20 THE WITNESS: I don't
21 recall.
22 BY MR. BAKER:
23 Q. Do you -- do you recall
24 whether or not you were involved with

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1 helping develop DEA talking points with
2 respect to this SOM that was inserted
3 into the SOP 8/25/10?
4 A. Yeah, I'm not sure what
5 you're referencing as far as DEA talking
6 points.
7 Q. Okay.
8 MR. BAKER: We'll take just
9 a short break while I pull that.
10 Let's go back on the record.
11 (Document marked for
12 identification as Exhibit
13 CVS-Devlin-P-81.)
14 BY MR. BAKER:
15 Q. Let me show you Exhibit
16 Number 81.
17 Okay. You see this e-mail
18 on Exhibit 81 that's dated September 1,
19 2010, from John Mortelliti to various
20 people within CVS. Do you see that?
21 A. I do see that.
22 Q. All right. Do you see where
23 it talks about DEA talking points as
24 being the subject?

<p style="text-align: right;">Page 138</p> <p>1 A. DEA speaking points, yes. 2 Q. Okay. And it says, "Team, 3 these are the final approved speaking 4 points for the DEA agents if they come to 5 one of your facilities and question 6 suspicious monitoring. It is okay to 7 share this document. Please be sure your 8 team understands it before presenting it 9 so it doesn't look like a prop instead of 10 a tool." 11 Is that what that says? 12 A. That's what the e-mail 13 states, yes. 14 Q. Okay. And within the DEA 15 talking points, if you go to, about the 16 sixth or seventh page in at the bottom, 17 it says -- 18 MS. MILLER: What's the 19 Bates number? 20 MR. BAKER: The Bates is 21 75306. If you'll rotate that. 22 BY MR. BAKER: 23 Q. It's on your screen. Do you 24 see that?</p>	<p style="text-align: right;">Page 140</p> <p>1 different names of the different CVS 2 entities that were listed as owners of 3 these distribution centers, did you see 4 that? 5 A. Yes, sir. 6 Q. Okay. Who and what -- let 7 me -- let me ask you this. 8 Who decided within CVS that 9 this would be a distribution center to 10 distribution center operated system as 11 opposed to a centralized system at the 12 time it was rolled out, this SOM/SOP was 13 rolled out 8/25/2010? 14 MS. MILLER: Objection. 15 THE WITNESS: I can't recall 16 particulars, but it -- you know, 17 it -- probably would have been 18 discussions amongst -- I'm sure I 19 was included. Probably with John 20 Mortelliti. 21 But again, I'm just -- I 22 can't recall exact conversations. 23 You know, probably soliciting some 24 input by them, getting into more</p>
<p style="text-align: right;">Page 139</p> <p>1 A. 75306. I do see that. 2 Q. It says, "Responsibilities. 3 DC Rx." What is a DC Rx? 4 A. I believe that would be DC 5 pharmacy. 6 Q. Okay. "Review report, IRR, 7 daily and determine whether variances are 8 within acceptable ranges," correct? 9 A. That's what it states. 10 Q. Okay. And then it says 11 on -- go two pages further, or three 12 pages further, at 75309. Under FAQ. It 13 says, "why is the DC responsible to 14 review suspicious orders?" 15 Do you see that? 16 A. I do. 17 Q. Okay. It says, "The DC, as 18 a separate DEA registrant, is responsible 19 for products shipped from the facility. 20 DEA regulations require all distributors 21 to report suspicious orders," correct? 22 A. That's what it states, yes. 23 Q. Now, you saw that document 24 that I presented to you that showed the</p>	<p style="text-align: right;">Page 141</p> <p>1 theorizing. 2 But, you know, as far as 3 actually remembering, I don't. 4 You know, from what I 5 recall, you know, as the process 6 evolved, you know, it's -- you 7 know, we looked at centralization, 8 we looked at individualization. 9 BY MR. BAKER: 10 Q. Okay. With respect to that, 11 when it was first rolled out and 12 centralized in Lumberton, New Jersey, at 13 what point was it then transferred to a 14 DC-to-DC basis, if at all? 15 A. I just -- I know at one 16 point it was. I just -- I can't recall 17 the date. 18 MR. BAKER: Hold on. Let me 19 take a quick break. I need to 20 pull those documents if you can't 21 recall. I'll be -- 22 THE VIDEOGRAPHER: We're 23 going off the record. The time is 24 10:39.</p>

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1 (Short break.)
 2 THE VIDEOGRAPHER: We are
 3 going back on record. Beginning
 4 of Media File Number 4. The time
 5 is 10:44.
 6 BY MR. BAKER:
 7 Q. Okay. Mr. Devlin, when you
 8 were at CVS in 2010, August, we talked
 9 about Mr. Mortelliti doing the IR reviews
 10 out of Lumberton, New Jersey initially,
 11 correct?
 12 A. We did discuss that, yes.
 13 Q. Okay. And at that point
 14 this was not a
 15 distribution-to-distribution center
 16 operation. It was out of one
 17 distribution center in Lumberton, New
 18 Jersey. Is that accurate or not?
 19 A. Yeah. And again, I didn't
 20 recall the dates. But I know we kind
 21 of -- we had central. We had
 22 distribution, central, so...
 23 Q. And we went over the DEA
 24 talking points that showed that the

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1 intent was to make this a distribution
 2 center-oriented program, not a
 3 centralized one, right?
 4 MS. MILLER: Objection.
 5 BY MR. BAKER:
 6 Q. Is that accurate or not?
 7 MS. MILLER: Objection.
 8 THE WITNESS: Well,
 9 according to the --
 10 BY MR. BAKER:
 11 Q. Wait a minute, because she
 12 objected. So I've got to re-ask the
 13 question until that stops. Okay.
 14 According to the document --
 15 MS. MILLER: I have a right
 16 to object.
 17 MR. BAKER: No, she does.
 18 But I want to make sure we get it
 19 right.
 20 MS. MILLER: I want to make
 21 sure he's aware that I have a
 22 right to object.
 23 BY MR. BAKER:
 24 Q. Okay. So you understand

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1 from looking at the documentation, what
 2 is your understanding as to what the
 3 intent was of CVS insofar as this being
 4 either a centralized versus a
 5 distribution center by distribution
 6 center operation?
 7 MS. MILLER: Objection.
 8 THE WITNESS: According --
 9 MS. MILLER: You may answer.
 10 Go ahead.
 11 MR. BAKER: Well, she
 12 objected so I'm going to keep
 13 doing it until I get it clean.
 14 Okay.
 15 BY MR. BAKER:
 16 Q. So what was the purpose of
 17 that being in -- the distribution to
 18 distribution center IRR program versus --
 19 in the DEA talking points versus it being
 20 a centralized location?
 21 MS. MILLER: Objection.
 22 MR. BAKER: She objected
 23 again.
 24 BY MR. BAKER:

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1 Q. What does the -- what does
 2 the document that you looked at show as
 3 to what the DEA talking points say about
 4 the IRR program being a centralized
 5 versus a DC-to-DC-operated program? What
 6 does it say?
 7 A. I lost the page. What page
 8 are we on?
 9 Q. We just reviewed it. Did it
 10 say that it was going to be a
 11 distribution center-related program or
 12 that it was going to be a centralized
 13 program?
 14 A. It was referencing a
 15 distribution center being involved.
 16 Q. Okay. What was the thought
 17 process behind that so far as your
 18 involvement?
 19 A. I think we were just
 20 discussing from an efficiency standpoint,
 21 operational standpoint, what made the
 22 most sense as far as how we had the
 23 program in place.
 24 Q. And how many different

<p style="text-align: right;">Page 146</p> <p>1 people were going to have to be at the 2 distribution centers to do that if it was 3 a distribution center-related program 4 versus a centralized program? 5 A. I believe we were looking at 6 the pharmacy manager or supervisor of 7 each distribution center and the loss 8 prevention manager would have some 9 involvement, but the majority of the 10 involvement would be the pharmacy 11 supervisor and the -- you know, I think 12 at the time we were just looking at, you 13 know, again efficiencies, and it's -- 14 having the pharmacy supervisor at the DC 15 doing it, it would certainly, for their 16 respective distribution center, it would 17 take a lot less time to review than a 18 centralized process. I mean it would 19 take more time for a centralized process. 20 Q. Okay. And how long was it 21 intended to stay -- how long did you 22 intend for it to stay in a 23 distribution-center-to-distribution 24 center process versus a centralized</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Yeah, I just can't recall 2 the date. 3 (Document marked for 4 identification as Exhibit 5 CVS-Devlin-P-143.) 6 BY MR. BAKER: 7 Q. Let me show you Exhibit 143. 8 This shows that it's an e-mail from 9 Rachel Dingus to you, Frank Devlin. Who 10 is Rachel Dingus? 11 A. I can't recall. 12 Q. Okay. Does this show that 13 there was a loss prevention analyst 14 position being advertised for CVS? 15 A. Just give me a moment to 16 read through it. I mean, this is a job 17 description. 18 Q. And it's a job description 19 that's attached to an e-mail, 10/13/10, 20 correct? 21 A. Correct. 22 Q. To you, right? 23 A. Correct. 24 Q. All right. And it says,</p>
<p style="text-align: right;">Page 147</p> <p>1 process? 2 A. I can't recall a time frame. 3 Q. Okay. When was it rolled 4 out into a 5 distribution-center-to-distribution- 6 center process? 7 MS. MILLER: Objection. 8 Asked and answered. 9 BY MR. BAKER: 10 Q. Well, we have the DEA 11 talking points. Was it shortly after 12 that? 13 A. I just -- I can't -- I can't 14 recall the dates. 15 Q. If documentation showed that 16 it was in September -- late September 17 2010, early October 2010, would that be 18 consistent with your memory? 19 A. I just can't -- I can't -- I 20 just can't recall. 21 Q. Okay. In October 2010, did 22 you start advertising for a loss 23 prevention analyst in Knoxville, 24 Tennessee?</p>	<p style="text-align: right;">Page 149</p> <p>1 "Summary. PSE/control drug item review 2 analyst," correct? Look here. That's 3 what it says, right there? 4 A. Yes. 5 Q. And control drug would 6 include hydrocodone combination products, 7 or not? 8 A. Control drug, yes. 9 Q. Okay. And would these be 10 the control drugs that would be shipped 11 from the distribution centers to the 12 pharmacies? 13 A. To CVS stores, yes. 14 Q. Okay. And it says, "The 15 loss prevention analyst is responsible 16 for maintaining an adherence to the loss 17 prevention procedures, controls, and 18 investigations. The loss prevention 19 analyst will be responsible for daily 20 reviews of pseudoephedrine control drug 21 inventory review reports for ten 22 full-service Rx distribution centers, as 23 well as reports obtained from" -- "from 24 NovaStor (Viper)."</p>

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1 Is that what it says?
2 A. That's what it states, yes.
3 Q. Okay. So were there ten
4 distribution centers at the time, ten
5 pharmacy distribution centers?
6 A. According to this document,
7 yes.
8 Q. Okay. It says, "They will
9 initiate investigations and feedback from
10 loss prevention in the field as well as
11 the distribution centers"; is that
12 correct?
13 A. That's what it states.
14 Q. And under job description
15 under bullet Point 4, it says, "This
16 person will keep detailed notes on all
17 inventory review reports as well as open
18 cases," correct?
19 A. That's what it states.
20 Q. Okay. So let me ask, was
21 there an intent in October of 2012 for
22 you to make this a one location procedure
23 versus a distribution center to
24 distribution procedure?

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1 A. It appears based on this
2 document, yes.
3 Q. Okay. Now what changed by
4 the time those DEA talking points were
5 developed and the time that this -- this
6 advertisement takes place in October of
7 2010?
8 MS. MILLER: Objection.
9 BY MR. BAKER:
10 Q. What change did it cause you
11 to change your mind as to whether this
12 should be a distribution to
13 distribution-type operation --
14 distribution center to distribution
15 center-type operation as opposed to a
16 centralized operation?
17 MS. MILLER: Objection.
18 BY MR. BAKER:
19 Q. What changed, if anything?
20 MS. MILLER: Objection.
21 THE WITNESS: I can't recall
22 any change and I -- certainly I
23 don't recall any correlation to
24 DEA talking points in the creation

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1 of this document.
2 BY MR. BAKER:
3 Q. Well, the DEA talking points
4 said that this was going to be a
5 distribution-wide program, correct?
6 A. It did, yes.
7 Q. Okay. But then you, a month
8 later, in October, are advertising for
9 this to be a centralized location process
10 in Knoxville. Why?
11 MS. MILLER: Objection.
12 THE WITNESS: Alls I can
13 recall is I guess from an
14 operational efficiency standpoint,
15 what we felt was the best way to
16 approach it.
17 BY MR. BAKER:
18 Q. How many positions -- oh, go
19 ahead. I'm sorry. Were you finished?
20 A. No. So I mean, this, I
21 mean, you know, the whole suspicious
22 order monitoring process, I mean it
23 was -- it was a new process.
24 Q. Okay.

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1 A. And we had gone into -- you
2 know, it just continually evolved --
3 Q. Right.
4 A. -- over a period of time.
5 So whether it was
6 centralized or based in a distribution
7 center, I certainly don't recall any,
8 like major issue of wow, we -- we better
9 change this. That wasn't the case at
10 all. It was more, you know, my role as a
11 project manager, you know, not just on
12 SOM, but on other items, it's just -- I'm
13 always looking for efficiency, what is --
14 what's the best way to do this. So...
15 Q. Okay. Now, you mentioned --
16 you mentioned it was a new process, this
17 was a new SOM process, correct?
18 A. Well, the whole -- the whole
19 evolution of suspicious order monitoring.
20 I mean, it was an evolution in the
21 process.
22 Q. Okay. But this is a new
23 process, the new process was the one
24 described in the 8/25/10 SOP; is that

<p style="text-align: right;">Page 154</p> <p>1 right?</p> <p>2 A. No. I -- in the -- and</p> <p>3 according to that document, I -- and I</p> <p>4 think I've been consistent, the SOM</p> <p>5 process was up and running. It was up</p> <p>6 and running. So I wouldn't necessarily</p> <p>7 say it's a new process.</p> <p>8 When I use the term "new,"</p> <p>9 that's conceptually. I mean that may go</p> <p>10 back to, when you look at that -- you</p> <p>11 know, the DEA letter that you showed me.</p> <p>12 You know, they were -- the industry was</p> <p>13 changing. So we had to change.</p> <p>14 Q. Okay. So the SOM process</p> <p>15 that you are talking about, that -- that</p> <p>16 causes the generation of these item</p> <p>17 review reports, was this part of a</p> <p>18 process that developed from a 2008</p> <p>19 delivery of a software program by the</p> <p>20 Buzzeo related company?</p> <p>21 A. Yes. That would have been</p> <p>22 related to that.</p> <p>23 Q. Okay.</p> <p>24 A. But it was an enhancement of</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. Okay.</p> <p>2 A. But I don't know any of the</p> <p>3 details around that at all.</p> <p>4 Q. Okay. Insofar as any</p> <p>5 software program, do you know the details</p> <p>6 of any software program that existed</p> <p>7 before 2008 that related to suspicious</p> <p>8 order monitoring?</p> <p>9 A. Again, I would -- I would</p> <p>10 reference that prescription drug</p> <p>11 monitoring report.</p> <p>12 Q. Okay. Do you know the</p> <p>13 details of it is what I'm asking.</p> <p>14 A. I do not know the details.</p> <p>15 Q. Okay. Do you know the</p> <p>16 details of what it monitored or how it</p> <p>17 monitored it?</p> <p>18 A. I do not know the details.</p> <p>19 Q. So -- so if we're trying to</p> <p>20 ask you, Frank Devlin, as to what your</p> <p>21 knowledge is of suspicious order</p> <p>22 monitoring in the -- in the nature of a</p> <p>23 software program before the 2008 Buzzeo</p> <p>24 program was delivered to CVS, is it true</p>
<p style="text-align: right;">Page 155</p> <p>1 our existing processes.</p> <p>2 Q. Right. Before that Buzzeo</p> <p>3 related software program was delivered to</p> <p>4 CVS in 2008, was there any</p> <p>5 software-related program that CVS</p> <p>6 implemented in its systems for doing</p> <p>7 suspicious order monitoring?</p> <p>8 A. I know on the field side</p> <p>9 there was some software programs that</p> <p>10 would address suspicious order</p> <p>11 monitoring. But, you know, as far as the</p> <p>12 details and how that worked, I'm just --</p> <p>13 I'm not privy to that. But I know there</p> <p>14 was a software program, and also even</p> <p>15 some manual processes -- processes that</p> <p>16 were in place.</p> <p>17 Q. Insofar as the details of</p> <p>18 that, you would not know?</p> <p>19 A. As far as the fields?</p> <p>20 Q. Yes.</p> <p>21 A. Fields, no, I really wasn't</p> <p>22 involved in that. I believe it was</p> <p>23 called Prescription Drug Monitoring</p> <p>24 Report.</p>	<p style="text-align: right;">Page 157</p> <p>1 that you -- your answer is you don't</p> <p>2 know?</p> <p>3 A. I would recommend you speak</p> <p>4 to someone else.</p> <p>5 MS. MILLER: Objection.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. Okay. Is that because you</p> <p>8 don't know the details of it?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: Again, I know</p> <p>11 there was a software program</p> <p>12 called Prescription Drug</p> <p>13 Monitoring. I do not know the</p> <p>14 details of it.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Okay. And you don't know</p> <p>17 how it operated or what it did to</p> <p>18 operate; is that accurate?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: I --</p> <p>21 BY MR. BAKER:</p> <p>22 Q. She objected, so I need to</p> <p>23 re-ask the question.</p> <p>24 Do you know the details of</p>

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1 that program?

2 A. I know there was a

3 prescription drug monitoring program. I

4 do not know the details of it.

5 Q. Okay. Do you know who

6 operated it?

7 A. It was part of the field

8 section of the loss prevention

9 department.

10 Q. Okay. Do you know who in

11 loss prevention operated it?

12 A. No.

13 Q. Okay. Did you ever see it

14 operated?

15 MS. MILLER: Objection.

16 THE WITNESS: I don't -- no,

17 I don't recall seeing it

18 operating.

19 BY MR. BAKER:

20 Q. Okay. Let me get back to

21 this IRR process. Let me show you an

22 e-mail that's Exhibit 71.

23 (Document marked for

24 identification as Exhibit

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1 CVS-Devlin-P-71.)

2 BY MR. BAKER:

3 Q. And this shows an e-mail

4 from Mr. Mortelliti -- excuse me, from

5 Ellen Demetrius to John Mortelliti. It's

6 dated March 10, 2011. And above that is

7 an e-mail dated March 14, 2011, from

8 Mr. Mortelliti to Ms. Demetrius and

9 copied to Ms. Hinkle and a copy to you.

10 Do you see that?

11 A. I'm reading through it now.

12 Q. Okay. On 3/14/11 there's

13 an -- an e-mail that you received that

14 says, "The IRR process has been shifted

15 to the Knoxville DC with the LP analyst

16 position. I have forwarded the info to

17 Pam Hinkle who will be overseeing the

18 process going forward."

19 Did I read that correctly?

20 A. Yes, sir.

21 Q. Okay.

22 MS. MILLER: Bill, before

23 you move, there's a -- the second

24 page appears to be an e-mail from

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1 2012.

2 THE WITNESS: Yes.

3 MS. MILLER: Did you intend

4 for that to be part of the

5 exhibit?

6 MR. BAKER: You know, I

7 don't know, but we'll -- we'll let

8 that stay as it is, because that's

9 the way it was submitted.

10 We'll go over that in just a

11 second.

12 BY MR. BAKER:

13 Q. So go ahead and look at

14 that. Is that true that's what it says,

15 it says, "The IRR process has been

16 shifted to our Knoxville DC with the LP

17 analyst position," and this is dated

18 March 14, 2011?

19 A. That's what it states, yes.

20 Q. Okay. Would that be

21 consistent with your recollection of when

22 it was moved from a DC to DC basis to a

23 centralized location in Knoxville DC?

24 MS. MILLER: Objection.

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1 BY MR. BAKER:

2 Q. Go ahead.

3 MS. MILLER: Go ahead and

4 answer.

5 THE WITNESS: That -- that

6 would be within the ballpark.

7 BY MR. BAKER:

8 Q. Okay. And do you know why

9 it was moved from a distribution

10 center-related program to Knoxville at

11 that time?

12 MS. MILLER: Objection.

13 Asked and answered.

14 BY MR. BAKER:

15 Q. Do you know?

16 A. I believe I -- I had

17 mentioned from a -- you know, the

18 continuous evolution of the process and

19 from an operational efficiency

20 standpoint.

21 Q. Did it -- did it cause less

22 people to have to be employed by CVS to

23 run the program if it was centralized in

24 one location as opposed to run out of the

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1 11 distribution centers?
2 MS. MILLER: Objection.
3 BY MR. BAKER:
4 Q. There was an objection.
5 Did it -- did it cost less
6 money to employ people to run the program
7 if it was run out of a centralized
8 location as opposed to a distribution
9 center to distribution center location?
10 A. Cost less money?
11 Q. Yes, sir.
12 A. No.
13 Q. Okay. Look at the next page
14 of that e-mail, if you would.
15 A. The next page?
16 Q. Yes. It's dated 11/11/12
17 from Mr. Aaron Burtner to Christopher
18 Tulley. 11/11/12. Do you see that?
19 A. Aaron Burtner to Chris
20 Tulley?
21 Q. Do you see the e-mail right
22 in front of you?
23 A. Yes, sir.
24 Q. Okay. Look right below it.

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1 Because you read e-mails from bottom to
2 top in terms of time. Okay.
3 The -- the one that's dated
4 November 11, 2012, at 7:15 a.m., it says,
5 "Hi guys, I met with John A. and Ellen on
6 Friday. They advised me when this
7 program was initially designed it was
8 meant for the review that Aaron does to
9 be done in all 11 DCs. Do you know why
10 and when it was consolidated to just one
11 DC doing the review?"
12 Do you see that? Did I read
13 that correctly?
14 A. I do see that.
15 Q. Okay. And do you see where
16 it's answered at the top there,
17 11/11/2012, Aaron Burtner to Christopher
18 Tulley. Do you see that?
19 A. Yes.
20 Q. Okay. And it says, "Chris,
21 Pam will be able to shed more light but
22 two big reasons. Review consistency with
23 having just one person completing the
24 reviews rather than 11 people."

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1 Do you see that?
2 A. Yes.
3 Q. Okay. Is it true that
4 you -- you would have one person doing
5 the reviews if it's done in a centralized
6 location?
7 Is that true?
8 MS. MILLER: Objection.
9 THE WITNESS: During this
10 time frame?
11 BY MR. BAKER:
12 Q. During the time frame that
13 you had it done at a centralized location
14 while you were at CVS. If you had one
15 person -- if you had it done in one
16 centralized location, was one person
17 doing the reviews?
18 A. Yes. We had, during my
19 tenure, I believe we had one person, and
20 then I believe we may have gone up to two
21 people.
22 Q. Okay. The one person during
23 your tenure was who?
24 A. I just don't recall their

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1 name.
2 Q. Was it initially John
3 Mortelliti?
4 A. Well, initially John was
5 involved, yes.
6 Q. Was he doing IRR reviews in
7 Lumberton, New Jersey?
8 A. Yes, sir.
9 Q. Okay. And was he doing it
10 by himself, one person?
11 A. At one point in time, yes.
12 Q. Okay. And when it -- the
13 process was shifted out of the
14 distribution centers to Knoxville, who
15 was the one person doing it in Knoxville?
16 A. I don't recall.
17 MS. MILLER: Objection.
18 BY MR. BAKER:
19 Q. Was -- when the process was
20 transferred out of the distribution
21 centers, the SOM IRR review process, when
22 that happened, when it's transferred out
23 of the distribution centers back to a
24 centralized location in Knoxville, that,

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1 according to the documentation, was
2 around March of 2012, correct?
3 MS. MILLER: Objection.
4 March of --
5 BY MR. BAKER:
6 Q. March of 2011. Is that
7 correct?
8 A. According to the
9 documentation --
10 Q. Okay.
11 A. -- it does appear March of
12 2011, yes.
13 Q. And when that happened, was
14 Pam Hinkle the one that was doing the IRR
15 reviews?
16 A. I don't believe so.
17 Q. Who was doing them?
18 A. I don't recall their name.
19 Q. Okay. Was it one person
20 that was doing the IRR reviews in
21 Knoxville?
22 A. It would have been one
23 person, but I'm sure Pam had some
24 involvement.

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1 Q. Who was that one person?
2 A. I do not recall their name.
3 Q. Okay. And did this continue
4 to be a one-person-related review process
5 until you left in 2012?
6 A. No.
7 MS. MILLER: Objection.
8 BY MR. BAKER:
9 Q. How many people reviewed the
10 IRRs when the program was in Knoxville?
11 A. I believe it began with one.
12 Q. Okay. And you don't
13 remember who that was?
14 A. I do not recall their name.
15 Q. Okay. Did it evolve into
16 two?
17 A. It may have.
18 Q. Do you know one way or the
19 other?
20 A. I -- I just -- it may have.
21 I just -- I just -- I don't remember.
22 Q. Okay. Were you involved
23 with supervising any of that?
24 MS. MILLER: Objection.

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1 THE WITNESS: No.
2 BY MR. BAKER:
3 Q. You were not involved with
4 supervising any of the reviews of the
5 IRRs?
6 MS. MILLER: Objection.
7 BY MR. BAKER:
8 Q. Were you involved with
9 supervising the review of the IRRs?
10 A. I guess the definition of
11 "supervising" --
12 Q. What was your involvement
13 with respect to the IRRs and the review
14 of the IRRs, if anything, while you were
15 at CVS?
16 A. I was not involved in the
17 day-to-day review of the IRR.
18 Q. What was your involvement
19 with respect to management of how many
20 people would review IRRs?
21 A. I would be involved in the
22 decision as far as how many people would
23 review the IRR.
24 Q. Okay. And that was from

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1 what period to what period that you were
2 involved in making that decision?
3 A. It would probably be from
4 the beginning of the process till I left.
5 Q. And the process began when?
6 A. Maybe 2008, 2009 period.
7 Q. The IRR? That's consistent
8 with when the Buzzeo --
9 A. Yeah.
10 Q. -- software program was
11 delivered.
12 A. Yeah, it would be -- it
13 would correlate to that.
14 Q. Okay. Let's just make sure
15 I have the history correct. The Buzzeo
16 program was delivered to CVS in 2008; is
17 that right?
18 A. I think so.
19 Q. Okay.
20 A. I think so.
21 Q. The beginning of the year or
22 the end of the year? Or do you recall?
23 A. Probably closer to the end
24 of the year.

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1 Q. Okay. And the Buzzeo
2 program, did it have an algorithm within
3 it? Do you recall that?
4 A. I do recall an algorithm.
5 Q. Okay. Do you -- do you know
6 what the algorithm was?
7 A. I know it had an algorithm.
8 And I know there were, you know, it's
9 something that the Buzzeo team put
10 together. I know it involved the
11 assistance of statisticians.
12 But as far as the
13 particulars of the algorithm and the
14 details of the algorithm, I defer it to
15 the expertise that we had hired.
16 Q. Okay. Do you know whether
17 you could even interpret what the
18 algorithm meant if somebody showed it to
19 you?
20 A. No.
21 MS. MILLER: Objection.
22 Give me a chance. Thank you.
23 BY MR. BAKER:
24 Q. Do you know?

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1 MS. MILLER: Objection.
2 BY MR. BAKER:
3 Q. Did you answer that
4 question? Could you interpret what the
5 coefficients mean in the algorithm if
6 somebody showed them to you?
7 MS. MILLER: Objection.
8 THE WITNESS: No. You know,
9 I think it was -- there was
10 involvement from statisticians
11 that put the algorithm together.
12 And I certainly don't present
13 myself as a statistician.
14 BY MR. BAKER:
15 Q. Okay. Let me go back to
16 Exhibit 97, please.
17 MS. MILLER: Which document
18 is that?
19 MR. BAKER: That is the DEA
20 SOP, 8/25/10.
21 BY MR. BAKER:
22 Q. Go to Page 1 of that
23 document, which is Bates Number 88957.
24 And go down to the

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1 third-to-last paragraph where it starts
2 with, "CVS is responsible."
3 Do you see that?
4 A. Yes, sir.
5 Q. Okay. Let me read that to
6 you. I'm reading from the 8/25/2010 DEA
7 SOP that was adopted by CVS that date; is
8 that correct? Is that what I'm reading
9 from?
10 A. That's what it appears, yes.
11 Q. Okay. And this, according
12 to the documentation, is when the
13 suspicious order monitoring policy and
14 procedure was put into a written form to
15 place inside the standard operating
16 procedure manual; is that correct?
17 A. Again the process was in
18 place, but this is -- this appears to be
19 a formalized SOP.
20 Q. All right. It says, "CVS is
21 responsible for ensuring compliance with
22 DEA regulatory requirements. And that
23 responsibility cannot be abdicated or
24 transferred to anyone else."

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1 That's in your manual,
2 correct?
3 A. That's what it states.
4 Q. Okay. So you understand
5 from your own manual that that
6 responsibility cannot be abdicated or
7 transferred to anyone else? You
8 understand that from your own manual?
9 MS. MILLER: Objection.
10 MR. BAKER: There was an
11 objection.
12 BY MR. BAKER:
13 Q. Do you understand that
14 that's what the manual said at CVS
15 8/25/10? Do you understand that?
16 A. I don't quite understand as
17 far as -- I interpret abdicating or
18 transferring would be the entire program.
19 Q. Now, insofar as what these
20 coefficient measured within the algorithm
21 and that process that was delivered by
22 the Buzzeo company, do you know what they
23 measured?
24 A. I don't recall.

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1 Q. Okay. Do you know anything
2 about an algorithm scoring system that
3 was developed within that process?
4 A. I know there was some
5 scoring terminology, but the details of
6 that, I just -- I do not recall.
7 Q. Okay. And with respect to
8 that scoring process, do you know whether
9 or not it was ever changed from what it
10 was originally designed to do, to flag
11 at?
12 MS. MILLER: Objection.
13 BY MR. BAKER:
14 Q. Let's go back. I withdraw
15 the question.
16 Let's go back to the IRR.
17 I want to make sure we have
18 this down because it's very important for
19 me to understand.
20 The IRR process, that is
21 something, according to your testimony,
22 that started with the delivery of the
23 Buzzeo program in 2008. Is that right or
24 wrong?

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1 A. I believe that's correct.
2 Q. Okay. And the IRR process
3 from 2008 when that Buzzeo program was
4 delivered up through the time that we saw
5 Mr. Mortelliti as being the person
6 described in the SOM SOP 8/25/10 being in
7 Lumberton, New Jersey reviewing these
8 IRRs, was there any other person that was
9 reviewing them from 2008 to 2010 besides
10 Mr. Mortelliti in Lumberton, New Jersey?
11 A. I believe there may have
12 been.
13 Q. Okay. From 2008 to 2010, is
14 that where the IRRs were being reviewed
15 in Lumberton?
16 MS. MILLER: Objection.
17 THE WITNESS: I can't place
18 exact times.
19 BY MR. BAKER:
20 Q. Okay. When the program was
21 first delivered, the Buzzeo computer
22 program, the software program that caused
23 the development of this IRR system, where
24 were the IRRs initially being reviewed in

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1 2008?
2 MS. MILLER: Objection.
3 BY MR. BAKER:
4 Q. Go ahead.
5 MS. MILLER: You may answer.
6 THE WITNESS: That would be
7 in Lumberton.
8 BY MR. BAKER:
9 Q. Okay. And was that with
10 Mr. Mortelliti doing the reviews?
11 A. Yes.
12 Q. Okay. And then from 2008
13 all the way up to 2010, is that where the
14 IRRs were being reviewed, in Lumberton?
15 A. I can't recall 100 percent.
16 Q. Okay. To the best of your
17 knowledge, is that where they were being
18 reviewed?
19 A. They may have been. I just
20 don't know, as I testified earlier, that
21 as the program evolved, you know --
22 it's --
23 Q. I understand.
24 A. -- from centralization to

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1 distribution center and --
2 Q. We're going to try to take
3 it sequentially.
4 A. Right.
5 Q. Okay. 2008, you testified
6 that Mr. Mortelliti was reviewing the
7 IRRs in Lumberton, correct?
8 A. That is correct.
9 MS. MILLER: Objection. I
10 don't think he testified that it
11 was necessarily in 2008.
12 BY MR. BAKER:
13 Q. Okay. In 2008, who was
14 reviewing the IRRs and where were they
15 being reviewed?
16 A. Again, it -- I guess it
17 would come down to the -- the initial
18 delivery of the Buzzeo program.
19 Q. Okay.
20 A. I'll refer to it as the
21 Buzzeo program.
22 Q. Were there any IRRs being
23 reviewed in 2008?
24 A. I can't recall the exact

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1 date. I'd have to see when that program
2 was delivered.
3 Q. Okay. Were there any IRRs
4 being reviewed in 2009?
5 A. I believe so.
6 Q. Who was reviewing the IRRs?
7 A. Initially, initially when
8 the Buzzeo program was delivered,
9 whenever that was, the initial review
10 would have involved John Mortelliti.
11 Q. In 2009, if that's when the
12 Buzzeo program was put in operation, is
13 that when Mr. Mortelliti would have been
14 doing the IRR reviews in Lumberton?
15 A. Can you repeat that?
16 Q. If the IRRs were being
17 reviewed in 2009, then would it have been
18 Mr. Mortelliti, to the best of your
19 recollection, in Lumberton?
20 A. Again, once the Buzzeo
21 program was delivered and the IRR was
22 produced, the initial review was taking
23 place with Mr. Mortelliti.
24 Q. Okay. We saw from the DEA

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1 SOP -- SOM SOP 8/25/10 that he is the one
2 identified as the person reviewing the
3 IRRs in Lumberton, true?
4 A. Based on the SOP, that is
5 true.
6 Q. Okay. So if that's true,
7 then it shifted at some point from there
8 to the distribution centers, then back to
9 Knoxville, according to what the
10 documentation shows, right?
11 A. According to the
12 documentation, that is correct.
13 Q. Okay. And according to the
14 DEA talking points that were shown in
15 September, to be dated September of 2010
16 that I've showed you, that's when,
17 according to at least the DEA talking
18 points, it was sent to a distribution
19 center-wide basis; is that right or
20 wrong?
21 MS. MILLER: Objection.
22 BY MR. BAKER:
23 Q. You don't know?
24 A. According to the document,

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1 the document you've shown me, that's what
2 it's dated.
3 Q. Okay. And then according to
4 the -- the next set of documents that I
5 showed you, it was sent back into a
6 centralized location in March of 2011; is
7 that right?
8 MS. MILLER: Objection.
9 BY MR. BAKER:
10 Q. In Knoxville?
11 A. I -- we're going through so
12 many documents here. I would want to go
13 back and look at the documents.
14 Q. Okay. We'll let the
15 documents speak for themselves.
16 But in any event, once it
17 got to Knoxville, how long did it stay in
18 Knoxville before it was moved to
19 somewhere else to your knowledge?
20 A. I believe it was in
21 Knoxville till my last day of employment
22 with CVS.
23 Q. Okay. And your last day of
24 employment with CVS was in October of

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1 2012?
2 A. Yes.
3 Q. Okay. When it was in
4 Knoxville, how many people were reviewing
5 the IRRs to the best of your knowledge?
6 MS. MILLER: Objection.
7 THE WITNESS: It was
8 definitely one. Maybe two. I
9 just don't recall.
10 BY MR. BAKER:
11 Q. Okay. The "definitely one"
12 is a person that you can't recall the
13 name of; is that correct?
14 A. Correct.
15 Q. Okay. And the two, who
16 would -- who would the Number 2 have
17 been?
18 A. I didn't know --
19 Q. Again, somebody you can't
20 recall the name of?
21 MS. MILLER: Objection.
22 THE WITNESS: I'm not the
23 best with names.
24 BY MR. BAKER:

<p style="text-align: right;">Page 182</p> <p>1 Q. Okay. And so far as your 2 direct involvement with reviewing IRRs, 3 what was that direct involvement, if any? 4 MS. MILLER: Objection. 5 Asked and answered. 6 BY MR. BAKER: 7 Q. What was it? 8 A. My involvement would be to 9 just ensure that the IRRs were being 10 reviewed. 11 Q. Okay. Did you actually 12 review IRRs yourself? 13 A. I did not. 14 Q. Do you know how to -- how to 15 even review an IRR? 16 MS. MILLER: Objection. 17 THE WITNESS: Not at this 18 time. 19 BY MR. BAKER: 20 Q. Okay. Did you know at the 21 time when you were at CVS how to review 22 an IRR? 23 MS. MILLER: Objection. 24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 184</p> <p>1 MS. MILLER: Objection. 2 THE WITNESS: I -- I never 3 had the responsibility of 4 reviewing the IRR. 5 BY MR. BAKER: 6 Q. I think the question is, did 7 you know how to review an IRR in such a 8 manner that you felt comfortable coming 9 to any conclusions related to that review 10 of the IRR as it relates to the 11 suspicious order monitoring process? 12 MS. MILLER: Objection. 13 THE WITNESS: I would -- I 14 would defer it to the people 15 working for me. 16 BY MR. BAKER: 17 Q. Who are the people working 18 for you that you would defer to? 19 A. It would be -- regarding 20 what time frame? 21 Q. Any time frame that the -- 22 that you were employed at CVS and the IRR 23 process, review process, was implemented? 24 A. Certainly John Mortelliti.</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. IRR being item review 2 report. Did you even know how to do 3 that? 4 MS. MILLER: Objection. 5 BY MR. BAKER: 6 Q. Did you? 7 A. I think conceptually I would 8 have an idea, but I would never say I was 9 the IRR expert. 10 Q. Okay. From reviewing an 11 IRR, could you draw any conclusions to 12 the extent of your knowledge of how to 13 review IRRs when you were at CVS? 14 MS. MILLER: Objection. 15 THE WITNESS: I mean I 16 would -- I would rely on the 17 people working for me. 18 BY MR. BAKER: 19 Q. Okay. In other words, you 20 wouldn't rely upon your own conclusions 21 that you would reach for -- from 22 reviewing an IRR, you would rely upon the 23 people that work for you, is that what 24 you said?</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Okay. 2 A. Probably Pam Hinkle. 3 Q. Anybody else? 4 A. Those would be the two main 5 people. 6 Q. And Pam Hinkle's job with 7 relation to review of IRRs in that -- in 8 that context was what, what was her job? 9 MS. MILLER: Objection. 10 THE WITNESS: I believe she 11 would have been knowledgeable of 12 the process. 13 BY MR. BAKER: 14 Q. What was her job title? 15 A. I don't recall the exact job 16 title. 17 Q. Okay. Now, during the time 18 that you were, I guess, appointed with 19 respect to the -- the SOM SOP, in the 20 8/25/10 SOM SOP policy and procedure 21 manual, did you see that where you were 22 appointed to be the one to communicate to 23 the DEA and the only person to 24 communicate to the DEA, do you remember</p>

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1 that?

2 MS. MILLER: Objection.

3 MR. BAKER: There was an

4 objection. Let's go back.

5 BY MR. BAKER:

6 Q. Exhibit 97. Do you recall

7 in Exhibit 97 where I pointed out to you

8 that it said, "The only person who shall

9 talk to the DEA is the director of loss

10 prevention, Frank Devlin," do you recall

11 that?

12 A. At what page are you on?

13 Q. Mr. Devlin, look at

14 Page 88988 Roman numeral VIII-8. Reports

15 to DEA.

16 A. Okay. I see that.

17 Q. Okay. Now, it says here

18 that the director of loss -- the director

19 of logistics loss prevention will be the

20 only representative of CVS contacting the

21 DEA. Do you see that?

22 A. I do see that.

23 Q. Okay. How long did you

24 remain that person?

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1 A. I do not recall the time

2 frame. I do recall that this process did

3 evolve and, you know, from a delegation

4 standpoint and as Pam Hinkle became more

5 involved with day-to-day DEA issues, then

6 I know I -- certainly I felt comfortable

7 with Pam contacting the DEA.

8 Q. Did -- did Pam work for you?

9 A. Pam did work for me.

10 Q. Okay. During the entire

11 time that you were employed at CVS, did

12 you ever contact the DEA to report a

13 suspicious order of controlled

14 substances?

15 A. I did not.

16 Q. Okay. During the entire

17 time that you worked at CVS, are you

18 aware if Pam Hinkle ever contacted the

19 DEA to report the suspicious order of

20 controlled substances?

21 A. I believe there was one time

22 that she did.

23 Q. Okay. One time over a

24 period of what years that you were there?

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1 MS. MILLER: Objection.

2 THE WITNESS: I was employed

3 at CVS from 1991 through 2012.

4 BY MR. BAKER:

5 Q. Okay. Are you aware of when

6 Pam Hinkle reported any suspicious order

7 of controlled substances being

8 distributed out of a CVS distribution

9 center to the -- to the DEA?

10 A. I do not recall the time

11 frame.

12 Q. Okay. Do you recall what

13 distribution center it was distributed

14 out of, the one that she allegedly

15 reported, according to your recollection?

16 A. I do not recall the

17 distribution center and again 100 percent

18 confidence in the store. I can't say

19 100 percent what store it was.

20 Q. Okay. During the entire

21 time that you were employed at CVS, are

22 you aware of any suspicious order of

23 controlled substances being reported by

24 CVS to the DEA as it relates to any store

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1 in Ohio?

2 A. No, I don't recall any.

3 Q. Same question as it relates

4 to any store in Florida.

5 MS. MILLER: Objection.

6 THE WITNESS: No, I don't

7 recall.

8 BY MR. BAKER:

9 Q. During the entire time that

10 you were employed at CVS, are you aware

11 of any report by CVS to the DEA of any

12 distribution of controlled substance to

13 any pharmacy in West Virginia?

14 A. No, I don't recall.

15 Q. Did anybody ever bring to

16 your attention anything about a

17 suspicious order out of any transaction

18 between a CVS pharmacy and a CVS

19 distribution center during the entire

20 time that you were employed at CVS?

21 MS. MILLER: Objection.

22 MR. BAKER: She objected.

23 BY MR. BAKER:

24 Q. During the entire time that

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1 you were employed at CVS, did anybody
2 ever bring to your attention a suspicious
3 order by any pharmacy, by any CVS
4 pharmacy, to any CVS distribution center?
5 A. Yes.
6 Q. When?
7 A. I do not recall a time
8 frame.
9 Q. What pharmacy and what
10 distribution center?
11 A. I know it was a situation I
12 discussed with general counsel at CVS.
13 Q. Okay.
14 MS. MILLER: Objection.
15 BY MR. BAKER:
16 Q. I'm not asking what you
17 discussed with your counsel, okay.
18 MS. MILLER: No. Objection.
19 I'm going to instruct him not to
20 answer to the extent there's
21 information that may reveal
22 attorney/client communications.
23 And he did just testify
24 about a suspicious order that he

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1 was aware of that was reported.
2 MR. BAKER: Yeah, I'm trying
3 to ask him. Let me --
4 BY MR. BAKER:
5 Q. I want you to understand
6 that I'm not trying to ask you any
7 questions about your attorneys'
8 conversations with you or your
9 attorney -- or your conversations with
10 CVS' attorneys, okay? I want you to
11 understand that before I ask you the next
12 set of questions.
13 Are we clear about that? So
14 when I ask you the question, I don't want
15 you to tell me what your attorneys said
16 to you or what you said to them. Is that
17 clear?
18 A. Yes.
19 Q. The question is this:
20 During the entire time that you were
21 employed at CVS, did anybody bring to
22 your attention the existence of a
23 suspicious order that had been ordered by
24 a CVS pharmacy from a CVS distribution

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1 center?
2 A. Yes.
3 Q. Okay. When was this?
4 A. I do not recall.
5 Q. What -- approximately what
6 year was it?
7 A. It could be '10, '11, maybe
8 '12. I just don't recall.
9 Q. Out of what state was the
10 order made by a pharmacy to a
11 distribution center of CVS?
12 MS. MILLER: And again, he's
13 asking you whether there was ever
14 a suspicious order.
15 THE WITNESS: Okay.
16 MS. MILLER: An order --
17 right?
18 BY MR. BAKER:
19 Q. I'm asking you, did anybody
20 bring to your attention the existence of
21 a suspicious order by a CVS pharmacy to a
22 CVS distribution center? That's what I'm
23 asking you?
24 A. Okay. Okay.

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1 Q. I'm asking you -- you said
2 you thought there was one, right?
3 A. In -- actually, in -- I
4 guess from a clarification standpoint, I
5 would -- I would deem it as potentially
6 suspicious order.
7 Q. Okay. Did that ever get
8 reported to the DEA by you?
9 A. No.
10 Q. Do you know what state that
11 occurred in?
12 A. Again, when it was -- and I
13 apologize as far as the terminology goes,
14 but it was a potentially suspicious
15 order.
16 Q. Okay. During the entire
17 time that you were there, are you aware,
18 specifically of any suspicious order that
19 was reported by CVS to the DEA? Any?
20 MS. MILLER: Objection.
21 Asked and answered.
22 THE WITNESS: Yes.
23 BY MR. BAKER:
24 Q. Okay. Who did the

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<p>1 reporting?</p> <p>2 A. I believe it was Pam Hinkle.</p> <p>3 Q. When was the reporting done?</p> <p>4 A. I do not recall.</p> <p>5 Q. Was it brought to your</p> <p>6 attention?</p> <p>7 A. It would have been, yes.</p> <p>8 Q. Do you know what state the</p> <p>9 order occurred within?</p> <p>10 A. I'm just not 100 percent</p> <p>11 sure.</p> <p>12 Q. Okay. During the entire</p> <p>13 time that you were employed at CVS, I</p> <p>14 think you already testified, you're not</p> <p>15 aware of any suspicious orders being</p> <p>16 reported to the DEA for orders that were</p> <p>17 made by CVS pharmacies to CVS</p> <p>18 distribution centers as it relates to</p> <p>19 Ohio, the state of Ohio, correct?</p> <p>20 A. That -- that does not sound</p> <p>21 familiar.</p> <p>22 Q. Okay. Insofar as the IRR</p> <p>23 process, you told me that you had</p> <p>24 delegated that to some extent to other</p>	<p>1 want to take a little bit of a</p> <p>2 break?</p> <p>3 MS. MILLER: Yeah.</p> <p>4 MR. BAKER: Okay.</p> <p>5 THE VIDEOGRAPHER: Off the</p> <p>6 record. 11:32.</p> <p>7 (Short break.)</p> <p>8 THE VIDEOGRAPHER: Back on</p> <p>9 record. Beginning Media File</p> <p>10 Number 5. The time is 11:48.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Mr. Devlin, I'm going to</p> <p>13 show you Exhibit 146.</p> <p>14 (Document marked for</p> <p>15 identification as Exhibit</p> <p>16 CVS-Devlin-P-146.)</p> <p>17 BY MR. BAKER:</p> <p>18 Q. This is a letter dated</p> <p>19 March 22, 2007, to you from Buzzeo PDMA.</p> <p>20 Is that Ron Buzzeo?</p> <p>21 MS. MILLER: Bill, this has</p> <p>22 highlights on it. Is this your</p> <p>23 copy?</p> <p>24 MR. BAKER: Probably.</p>
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<p>1 people. Is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you tell me who</p> <p>4 those other people were, you mentioned</p> <p>5 John Mortelliti and you mentioned Pam</p> <p>6 Hinkle, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Who else? To who</p> <p>9 else did you delegate that?</p> <p>10 A. Well, they were the LP</p> <p>11 analyst position.</p> <p>12 Q. Do you know who those were?</p> <p>13 A. I just don't recall their</p> <p>14 names.</p> <p>15 Q. Okay. During the time that</p> <p>16 you were there --</p> <p>17 MR. BAKER: Let's take a</p> <p>18 break for just one second. I've</p> <p>19 got to --</p> <p>20 MS. MILLER: Can we actually</p> <p>21 take -- I think we've been going</p> <p>22 for a while. Can we take a little</p> <p>23 bit of a break?</p> <p>24 MR. BAKER: Okay. Do you</p>	<p>1 BY MR. BAKER:</p> <p>2 Q. Is that Ron Buzzeo, is that</p> <p>3 who you are talking about?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. This is a letter</p> <p>6 directed to you, Frank Devlin, director</p> <p>7 of logistics and loss prevention,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And this is the</p> <p>11 company that you were subcontracting with</p> <p>12 for CVS to develop that software program</p> <p>13 that would implement the suspicious order</p> <p>14 monitoring of controlled substances,</p> <p>15 correct?</p> <p>16 MS. MILLER: Objection.</p> <p>17 MR. BAKER: All right.</p> <p>18 There's an objection.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. What was this company, what</p> <p>21 were they, in the context of CVS and</p> <p>22 suspicious order monitoring?</p> <p>23 A. I had -- this was our -- I</p> <p>24 viewed them as our subject matter experts</p>

<p style="text-align: right;">Page 198</p> <p>1 around DEA-related matters.</p> <p>2 Q. Okay. Is this who you hired</p> <p>3 on behalf of CVS to write the software</p> <p>4 program that was implemented into the</p> <p>5 suspicious order monitoring program at</p> <p>6 CVS?</p> <p>7 MS. MILLER: Objection.</p> <p>8 MR. BAKER: There was an</p> <p>9 objection. All right. So here we</p> <p>10 go.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. And every time it happens, I</p> <p>13 have to rephrase the question until I get</p> <p>14 it right and there's no objection. Okay?</p> <p>15 So here we go.</p> <p>16 Was this the company that</p> <p>17 you hired to write the software program</p> <p>18 for CVS?</p> <p>19 MS. MILLER: Objection.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. Was this the company that</p> <p>22 wrote the software program for CVS?</p> <p>23 MS. MILLER: Objection.</p> <p>24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 200</p> <p>1 MS. MILLER: Objection.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. What involvement, if any,</p> <p>4 did you have with respect to the</p> <p>5 retunement process?</p> <p>6 A. I can't recall exact dates</p> <p>7 or exact calls, you know, exact time</p> <p>8 frame, but I do, you know, recall</p> <p>9 participating in conference calls.</p> <p>10 (Document marked for</p> <p>11 identification as Exhibit</p> <p>12 CVS-Devlin-P-150.)</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Let me show you Exhibit 150.</p> <p>15 Okay. This is an e-mail dated</p> <p>16 February 9, 2011, from Mr. Mortelliti to</p> <p>17 Frank Devlin. That's you, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And it says,</p> <p>20 "Thankfully." And then below that,</p> <p>21 February 9, 2011, from Robert Williamson</p> <p>22 at Cegedim.com -- that's the Buzzeo</p> <p>23 company, is it not?</p> <p>24 A. I believe it's Cegedim.</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. Who wrote the software</p> <p>2 program for CVS?</p> <p>3 A. That would have been Cegedim</p> <p>4 Dendrite or Buzzeo PDMA.</p> <p>5 Q. Okay. When was that</p> <p>6 software program written?</p> <p>7 A. I believe it's -- it took a</p> <p>8 period of time. The exact date that it</p> <p>9 was written, I don't recall the exact</p> <p>10 date that it was written.</p> <p>11 Q. Okay. Was the program ever</p> <p>12 rewritten after the time that it was</p> <p>13 initially written?</p> <p>14 MS. MILLER: Objection.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Was the program ever retuned</p> <p>17 after the time that it was originally</p> <p>18 delivered to CVS?</p> <p>19 A. Yes.</p> <p>20 Q. When was it retuned?</p> <p>21 A. I do not recall.</p> <p>22 Q. Were you involved with</p> <p>23 anything that caused the retunement</p> <p>24 process to take place?</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Is it correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And it's to</p> <p>4 Mortelliti, Misiaczek, Ellen Demetrius,</p> <p>5 and it has a CVS retunement attached to</p> <p>6 it; is that correct?</p> <p>7 A. That's what it states, yes.</p> <p>8 Q. It says, "Attached is the</p> <p>9 CVS retunement documentation. It</p> <p>10 contains a revised algorithm and</p> <p>11 additional required information for your</p> <p>12 suspicious order monitoring system."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, if you go to</p> <p>16 that retunement document. If you turn to</p> <p>17 Page 1, it says at the bottom, "In</p> <p>18 December 2008, CCS delivered an initial</p> <p>19 SOM model to CVS which was" -- "which CVS</p> <p>20 integrated into their order management</p> <p>21 process."</p> <p>22 A. I'm sorry. You said Page 1.</p> <p>23 Q. Right here. The retunement.</p> <p>24 Page --</p>

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1 MS. MILLER: He's moved --
2 he's moved to the attachment.
3 BY MR. BAKER:
4 Q. Page 1 of the retunement.
5 Right here.
6 A. Okay. I just -- I went to
7 the following page.
8 Q. I'll physically show it to
9 you.
10 All right. It says, "In
11 December 2008" -- do you see that --
12 A. Yes, sir.
13 Q. -- at the bottom?
14 A. Yes, sir.
15 Q. -- "CCS delivered an initial
16 SOM model to CVS, which CVS integrated
17 into their order management process."
18 Is that what that says?
19 A. Yes.
20 Q. Is that when CVS first
21 implemented that program?
22 A. You know, according to that
23 document, you know, I'd say around the
24 time frame --

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1 Q. Okay.
2 A. -- that's when the SOM
3 process would have been enhanced to
4 include this program.
5 Q. Okay. Did it take a while
6 to get it implemented beyond the date
7 that it was delivered?
8 MS. MILLER: Objection.
9 THE WITNESS: I don't --
10 BY MR. BAKER:
11 Q. You don't what? You don't
12 recall? You don't know? You don't what?
13 What did you just say?
14 MS. MILLER: You didn't let
15 him finish his response.
16 BY MR. BAKER:
17 Q. Go ahead.
18 A. Can you repeat the question?
19 Q. Did it get implemented in
20 December 2008? In other words, did CVS
21 put this in operation in December 2008 or
22 did it get put into operation in 2009?
23 MS. MILLER: Objection.
24 BY MR. BAKER:

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1 Q. Go ahead.
2 A. I don't recall the exact
3 time frame it was implemented.
4 Q. Okay. And then it says, "In
5 July of 2009, CVS staff advised that the
6 current SOM model was pending a large
7 number of orders that were not suspicious
8 on their face and cleared by CVS staff."
9 Do you see that?
10 A. Let me read that. I do see
11 that.
12 Q. Okay. Were you involved
13 with the process of reviewing what was
14 being pended by this program to determine
15 whether or not the orders were suspicious
16 or not suspicious on their face. Were
17 you involved in that process?
18 A. Not in any great detail.
19 Q. Okay. See, I didn't ask if
20 you were involved in any great detail. I
21 asked you if you were involved. So were
22 you involved?
23 MS. MILLER: Objection.
24 BY MR. BAKER:

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1 Q. Were you involved?
2 MS. MILLER: Objection.
3 BY MR. BAKER:
4 Q. Answer.
5 A. To an extent.
6 Q. Okay. What extent were you
7 involved?
8 MS. MILLER: Objection.
9 BY MR. BAKER:
10 Q. Tell me.
11 A. More from a project manager
12 overview that the program was being
13 evaluated that were identifying, as it
14 states, a large amount of orders pending,
15 that it was being reviewed and to try
16 and -- trying to, I guess, figure out why
17 it was pending so many large orders.
18 I did not personally review
19 the reports. I mean, that is something
20 that I did delegate. I did, as I
21 mentioned earlier, I participated in
22 conference calls which would have
23 resulted in some changes.
24 Q. Did you ever have any

<p style="text-align: right;">Page 206</p> <p>1 involvement with the algorithm scoring 2 process? 3 MS. MILLER: Objection. 4 THE WITNESS: No. I didn't 5 get involved in the scoring 6 process. 7 BY MR. BAKER: 8 Q. Okay. Turn to Page 3 of 9 that retunement document. 10 Okay. Look at the bottom of 11 Paragraph 1 on Page 3 where it says, "The 12 model has been designed so that any order 13 with a score of .15 or higher is 14 identified as suspicious, pended and 15 should be investigated further." 16 Do you see that? Look. 17 A. You're on Page 3 of the 18 document? 19 Q. Right here where it's 20 underlined. "The model has been designed 21 so that any order with a score of .15 or 22 higher is identified as suspicious, 23 pended, and should be investigated 24 further."</p>	<p style="text-align: right;">Page 208</p> <p>1 A. I believe they were. 2 Q. Do you know what these 3 formulas mean? 4 A. Not in any great detail. 5 Q. Did you ever sit down with 6 anybody and ask them that question, what 7 do these formulas mean? 8 A. I defer you to the expertise 9 of our DEA consultant. 10 Q. My question is did you ever 11 sit down with anybody and ask them, what 12 do these formulas mean? 13 MS. MILLER: Objection. 14 THE WITNESS: I don't 15 recall. 16 BY MR. BAKER: 17 Q. Go to the next page, Page 6. 18 Highlight that page. 19 Do you know what these 20 formulas are? 21 A. Same answer as the previous 22 page. 23 Q. Were they implemented into 24 the software for suspicious order</p>
<p style="text-align: right;">Page 207</p> <p>1 Do you see that? 2 A. I do see that. 3 Q. Okay. Do you know what that 4 means? 5 A. Not at this time, no. 6 Q. Okay. Did you know what it 7 meant at that time? 8 A. I really can't recall. 9 Q. Turn to Page 4 of that 10 document. 11 MR. BAKER: Highlight 12 everything on that page. 13 BY MR. BAKER: 14 Q. Okay. Can you tell us what 15 these formulas mean? 16 A. No. 17 Q. Can you tell us if these 18 formulas were implemented into that 19 suspicious order monitoring software? 20 A. I was told they were. 21 Q. Go to the next page, Page 5. 22 Do you see these formulas right here? 23 Were these formulas implemented into that 24 software?</p>	<p style="text-align: right;">Page 209</p> <p>1 monitoring? 2 A. As I mentioned previously, I 3 believe they may have been. 4 Q. Who was in charge of dealing 5 with this company, other than you insofar 6 as the retunement of this program? 7 MS. MILLER: Objection. 8 BY MR. BAKER: 9 Q. Who? 10 A. As I can recall, it would 11 have been -- Mr. Mortelliti would have 12 been involved and we also probably had 13 some of our IT people involved also. 14 Q. Okay. The suspicious order 15 monitoring program was run out of the 16 department of logistics and loss 17 prevention at some point, was it not? 18 A. When you say run out of, the 19 actual software? 20 Q. The suspicious order 21 monitoring program was assigned by CVS to 22 what department within CVS when you were 23 employed there? 24 A. As far -- I don't know your</p>

<p style="text-align: right;">Page 210</p> <p>1 terminology of "assign." I mean, we -- 2 we were involved in implementing this 3 portion of the SOM program. 4 Q. Okay. "We were involved," 5 meaning what? Your department? 6 A. Yes. 7 Q. Okay. And were you the 8 director of that department? 9 A. Yes, I was. 10 Q. Was there anybody over you? 11 Besides being the director, is there any 12 position over you in that department? 13 A. There are multiple, yes. 14 Q. Okay. Who was just above 15 you? 16 A. Judy Hughes. 17 Q. And who was just above her? 18 A. At that time there were some 19 changes in management. It could have 20 been Ernie Deyle. It could have been 21 Mike Silveira. 22 Q. Okay. And so far as having 23 direct involvement with your department 24 with this company, was there anybody more</p>	<p style="text-align: right;">Page 212</p> <p>1 score of .15 or higher is identified as 2 suspicious, pended, and should be 3 investigated further"? 4 Is that what the document 5 says? 6 A. That is what the document 7 says. I would not use that terminology. 8 Q. Is that consistent with the 9 same scoring system that was used for the 10 2008 model before it was retuned in 2011? 11 A. I have no idea. 12 Q. Let me show you Exhibit 13 Number 56. 14 (Document marked for 15 identification as Exhibit 16 CVS-Devlin-P-56.) 17 BY MR. BAKER: 18 Q. All right. This is a 19 memorandum to Frank Devlin from John 20 Mortelliti dated August 13, 2010. Do you 21 see that? 22 A. Yes. 23 Q. Okay. It says, "The 24 following information is a breakdown of</p>
<p style="text-align: right;">Page 211</p> <p>1 directly involved than you? 2 A. John Mortelliti was very 3 involved, and given the implementation of 4 the algorithm into our systems, our IT 5 people would have been fairly involved 6 also. 7 Q. Okay. Let's go to the last 8 page of this document where it talks 9 about model coefficients. 10 Do you see that? 11 Do you know what model 12 coefficients are? 13 A. I don't recall. 14 Q. Okay. You just know from 15 looking at this program that it was 16 designed to pend an order at a score of 17 .15 according to the document; is that 18 right? 19 MS. MILLER: Objection. 20 BY MR. BAKER: 21 Q. Well, look at the document. 22 Let me read the document. Does this 23 document say this model -- "The model has 24 been designed so that any order with a</p>	<p style="text-align: right;">Page 213</p> <p>1 the tested results for the control drug 2 IRR as well as the plan of action to 3 incorporate the control drug IRR into a 4 permanent SOP." 5 Do you see that? 6 A. Yes. 7 Q. Okay. And it says, 8 "Completed as of 8/13/10. The control 9 drug IRR score of .15 has been tested by 10 John Mortelliti, Lumberton distribution 11 center," correct? 12 MS. MILLER: Objection. 13 THE WITNESS: That's what it 14 states. 15 MR. BAKER: What's the 16 objection? What -- what did I 17 state wrong? 18 MS. MILLER: Well, you -- 19 you said the control -- 20 MR. BAKER: Okay. 21 MS. MILLER: -- drug IRR 22 score. You are reading the 23 document but -- 24 BY MR. BAKER:</p>

<p style="text-align: right;">Page 214</p> <p>1 Q. Complete -- completed as of</p> <p>2 8/13/2010. The document says, "Control</p> <p>3 drug IRR of .15 has been tested by John</p> <p>4 Mortelliti," correct?</p> <p>5 That's what it says,</p> <p>6 correct?</p> <p>7 A. That's what it says.</p> <p>8 Q. And it has, paren, Lumberton</p> <p>9 distribution center, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And is that when he was</p> <p>12 reviewing the IRRs by himself?</p> <p>13 A. It may have been.</p> <p>14 Q. Okay. And then the next</p> <p>15 bullet down says, "It was determined that</p> <p>16 adjustment to the IRR score needed to be</p> <p>17 made to reduce the number of items</p> <p>18 falsely pending, flagged."</p> <p>19 Is that what it says? Is</p> <p>20 that what it says?</p> <p>21 A. It appears to be.</p> <p>22 Q. Okay. It says, "The team</p> <p>23 determined that there were no items under</p> <p>24 .65 in need of an investigation,"</p>	<p style="text-align: right;">Page 216</p> <p>1 Mortelliti to Devlin, do you see that?</p> <p>2 A. At the top of the page?</p> <p>3 Q. Yes, sir.</p> <p>4 A. Yes.</p> <p>5 Q. It says, "Frank, I want to</p> <p>6 be sure I am playing by the rules on</p> <p>7 this. I don't want to waste money doing</p> <p>8 a retune if we don't need one. I am not</p> <p>9 even sure if a retune would be needed</p> <p>10 since the report seems to be working well</p> <p>11 at the new score."</p> <p>12 Do you see that?</p> <p>13 A. I do see that.</p> <p>14 Q. Okay. The new score was</p> <p>15 .65, was it not?</p> <p>16 MS. MILLER: Objection.</p> <p>17 THE WITNESS: I --</p> <p>18 BY MR. BAKER:</p> <p>19 Q. What was the new score?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Sir?</p> <p>23 A. I have no idea.</p> <p>24 Q. Okay. At this new score,</p>
<p style="text-align: right;">Page 215</p> <p>1 correct?</p> <p>2 A. That's what it states.</p> <p>3 Q. And then it says, "The IRR</p> <p>4 score was eventually adjusted to .65."</p> <p>5 Is that what it says?</p> <p>6 A. That's what it states.</p> <p>7 Q. Okay. Were you involved at</p> <p>8 all with the adjustment of that score</p> <p>9 from .15 to .1 -- to .165?</p> <p>10 A. I may have been on</p> <p>11 conference call with the Buzzeo team. I</p> <p>12 would defer to the expertise of the</p> <p>13 Buzzeo statisticians.</p> <p>14 Q. Okay.</p> <p>15 (Document marked for</p> <p>16 identification as Exhibit</p> <p>17 CVS-Devlin-P-95.)</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Let me show you Exhibit</p> <p>20 Number 95.</p> <p>21 This is an e-mail -- a</p> <p>22 series of e-mails where it's talking</p> <p>23 about, if you go to the third page. Go</p> <p>24 to the third page. Do you see 7/26/10,</p>	<p style="text-align: right;">Page 217</p> <p>1 once it reached this new score that's</p> <p>2 being discussed here, did you report any</p> <p>3 suspicious orders to the DEA based upon</p> <p>4 this program, ever?</p> <p>5 MS. MILLER: Objection.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. Did you?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you remember reporting</p> <p>10 one, ever reporting one yourself?</p> <p>11 A. I did not.</p> <p>12 Q. All right. Let's go to the</p> <p>13 second page. Do you see on June 30,</p> <p>14 2010, John Mortelliti is writing an</p> <p>15 e-mail regarding an SOM update, at the</p> <p>16 bottom?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see that?</p> <p>19 A. I see that.</p> <p>20 Q. It says from John Mortelliti</p> <p>21 to Robert Williamson. It says, "Bob, I</p> <p>22 will review" -- "I will be reviewing the</p> <p>23 data for the next few weeks and testing</p> <p>24 some of the pending items with field loss</p>

<p style="text-align: right;">Page 218</p> <p>1 prevention. I'm going to focus on the 2 .15 score for starters." 3 Do you see that? 4 A. Yes. 5 Q. Okay. Was that the score 6 that the system was initially delivered 7 and designed to pend orders at, .15? 8 MS. MILLER: Objection. 9 Asked and answered. 10 THE WITNESS: I would have 11 to go back and look at documents 12 to -- if you have the actual 13 document that was delivered. 14 BY MR. BAKER: 15 Q. To the best of your 16 recollection, is that the score? 17 A. I can't -- I don't know. 18 Q. Okay. And then it talks 19 about movement of that score. If you 20 look at the first page. Do you see where 21 it is? First page, John Mortelliti to 22 Robert Williamson? 23 A. Yes. 24 MS. MILLER: The first page</p>	<p style="text-align: right;">Page 220</p> <p>1 after the July 26, 2010, 1:56 p.m. e-mail 2 was sent that says, ".65 is where we are 3 now. .70 looks a bit more realistic but 4 I still want to view data." 5 And this is the response. 6 Do you see it? 7 A. Which Bates number are you 8 on? 9 Q. I'm on Bates Number 88735. 10 Do see the response in the 11 middle of the e-mail? 12 MS. MILLER: Give him a 13 minute to -- to navigate these 14 documents, please, sir. 15 BY MR. BAKER: 16 Q. At the top of the page. Do 17 you see it? 18 MS. MILLER: I don't see 19 where you are either. 20 THE WITNESS: Where are you 21 referencing? 22 BY MR. BAKER: 23 Q. I'm pointing to it. 24 MS. MILLER: I know, but</p>
<p style="text-align: right;">Page 219</p> <p>1 of? 2 MR. BAKER: Of this 3 document. 4 MS. MILLER: Can you give me 5 the Bates number? 6 MR. BAKER: 88523. 7 BY MR. BAKER: 8 Q. July 26, 2010. Do you see 9 it? 10 Do you see it? 11 A. Yes. 12 Q. Okay. It says, ".65 is 13 where we are now. .70 looks a bit more 14 realistic, but I want to view data." 15 Do you see that? 16 A. I do see that. 17 Q. Was there an attempt to try 18 to move the score above .65 at one point, 19 that you're aware of? 20 A. I don't recall. 21 Q. Okay. Now go to the second 22 to the last page of those documents that 23 are in front of you. This is an e-mail, 24 July 26, 2010, at 2:01 p.m. And this is</p>	<p style="text-align: right;">Page 221</p> <p>1 what's the Bates label? 2 MR. BAKER: The Bates label 3 is 88735. 4 MS. MILLER: 735. Okay. 5 THE WITNESS: And what are 6 you asking me to look at? 7 BY MR. BAKER: 8 Q. Do you see what the response 9 is? 10 A. At the top of the page, yes, 11 I do. 12 Q. Okay. It says, "That's 13 quite a departure from the initial 14 threshold." 15 Do you see that? 16 A. I do. 17 Q. Okay. So let's read this in 18 context. The e-mail on the front page, 19 go back to the front page. This is an 20 e-mail dated July 26, 2010, at 1:56 p.m. 21 from John Mortelliti to Robert 22 Williamson. Do you see that? 23 A. Yes, sir. 24 Q. Okay. Does it say, ".65 is</p>

<p style="text-align: right;">Page 222</p> <p>1 where we are now, .70 looks a bit more 2 realistic but I still want to view data"? 3 Is that what that says? 4 A. Yes, it is. 5 Q. Okay. Now let's look at the 6 response, July 26, 2010, at 2:01 p.m. 7 from Robert Williamson to John 8 Mortelliti. Do you see that? 9 A. Yes. 10 Q. It says, "That's quite a 11 departure from the initial threshold." 12 Is that what it says? 13 A. That is what the document 14 states, yes. 15 Q. Okay. And to the best of 16 your recollection, was .15 the initial 17 threshold score? 18 MS. MILLER: Objection. 19 Asked and answered. 20 BY MR. BAKER: 21 Q. Sir, is that what it was? 22 A. I don't recall. 23 MS. MILLER: Objection. 24 Asked and answered.</p>	<p style="text-align: right;">Page 224</p> <p>1 THE WITNESS: From a 2 conceptual standpoint I had an 3 idea. But the inner workings or 4 the statistical formulas, that was 5 not my area of expertise and 6 that's why we deferred to the 7 outside consultants to ensure that 8 we were putting forth a program 9 that -- that met requirements. 10 BY MR. BAKER: 11 Q. What was the method that you 12 were approving for use to determine 13 whether or not an order from a CVS 14 pharmacy to a CVS distribution center 15 would be considered to be a suspicious 16 order? 17 MS. MILLER: Objection. 18 BY MR. BAKER: 19 Q. What was it? 20 A. At what point in time? 21 Q. 2011. Let's take 2011 for 22 instance. 23 A. Well, there would be, I 24 guess from a -- the terminology would be</p>
<p style="text-align: right;">Page 223</p> <p>1 BY MR. BAKER: 2 Q. You don't recall. Okay. 3 Do you even know how the 4 software program worked? 5 MS. MILLER: Objection. 6 BY MR. BAKER: 7 Q. Do you? 8 MS. MILLER: Objection. 9 BY MR. BAKER: 10 Q. Answer the question. Do you 11 know how the software program worked? 12 MS. MILLER: Objection. 13 THE WITNESS: I'm not an IT 14 person. 15 BY MR. BAKER: 16 Q. Listen to my question. 17 It's -- it's like a yes or a no answer. 18 If you say, "I'm not an IT person," that 19 does not answer the question. Here is 20 the question: 21 Do you know how that 22 software program worked? Do you know? 23 MS. MILLER: Objection. 24 You can answer the question.</p>	<p style="text-align: right;">Page 225</p> <p>1 potentially suspicious. 2 Certainly the 3 algorithm/software, more of algorithm, 4 developed by the Buzzeo team, was a 5 component of it. 6 We also had, you know, 7 processes within the distribution centers 8 as far as hourly employees that were 9 fulfilling the orders, the pharmacy 10 supervisors in the distribution centers 11 of being aware of any excessive order 12 quantities that were taking place. Also 13 had the prescription drug monitoring 14 report. That was also out there. 15 And I believe I was not 16 involved in it at all, but I know there 17 was -- or I believe there was training 18 taking place by individual pharmacists 19 and pharmacy techs within the stores 20 trying to -- you know, just alerting 21 people to be on the lookout for 22 potentially suspicious orders. 23 Q. And how did you define a 24 suspicious order in 2011?</p>

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1 MS. MILLER: Objection.
2 THE WITNESS: It was a whole
3 investigative process.
4 BY MR. BAKER:
5 Q. Was there any set definition
6 that you used or that you knew was being
7 implemented by CVS to be used to identify
8 a suspicious order in 2011?
9 A. I don't recall a set
10 definition. I know there are I think
11 even from the DEA standpoint, and again,
12 I can't quote the exact regulation, there
13 are a variety of components that go into
14 a potentially suspicious order.
15 Q. Let me show you Exhibit 68.
16 (Document marked for
17 identification as Exhibit
18 CVS-Devlin-P-68.)
19 BY MR. BAKER:
20 Q. Go ahead and grab it, if you
21 will.
22 All right. This is an
23 e-mail from Frank Devlin. That's you,
24 right?

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1 A. It is.
2 Q. To Judith Hughes, 5/16/11.
3 And the subject is "Control drug
4 suspicious order monitoring," correct?
5 A. That appears to be the
6 subject, yes.
7 Q. Okay. Turn to the next
8 page. Now, you see at the bottom of the
9 first page -- let's make sure we are
10 correct. Go back to the first page. The
11 e-mail. All right. The Bates number at
12 the bottom of that is 57736.
13 Do you see that?
14 A. I do.
15 Q. Okay. Now, go to the next
16 page, look at the Bates number at the
17 bottom. It's 57737, correct?
18 A. Correct.
19 Q. The Bates number of the next
20 page is 57738, correct?
21 A. Correct.
22 Q. All right. Now, go back to
23 57737, this is called, "Components of the
24 control IRR report," correct?

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1 MS. MILLER: And, Frank,
2 take a moment to read the document
3 if you'd like.
4 BY MR. BAKER:
5 Q. That's what this is called,
6 right?
7 A. That's the heading of Bates
8 number 7737, correct.
9 Q. Let me direct your attention
10 down to, "Process of identifying
11 suspicious orders." Please look.
12 Mr. Devlin, please look at this right
13 here. "Process of identifying suspicious
14 orders."
15 Do you see that?
16 A. I do.
17 Q. Okay. Could you read for us
18 what it says right there, the first
19 sentence.
20 A. "In order to determine which
21 items on the control IRR report are
22 suspicious, the order quantity field is
23 observed by the DC IRR analyst for a
24 quantity ordered of ten or more."

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1 Q. The next sentence.
2 A. "The month-to-date field is
3 then observed and compared to Lags 1, 2,
4 and 3."
5 Q. The next sentence?
6 A. "If the month-to-date
7 quantity is at least three times greater
8 than the quantities in Lags 1, 2, or 3,
9 then that item is labeled as being
10 suspicious."
11 Q. Okay. Is that the
12 definition of a suspicious order that you
13 were using in 2011?
14 MS. MILLER: Objection.
15 THE WITNESS: I don't -- I
16 can't recall the exact definition
17 of suspicious, and even, you know,
18 from a documentation standpoint, I
19 don't see a date on this document.
20 And I know, as far as the
21 evolution of our process goes, the
22 term "suspicious order," that was
23 not being properly used.
24 BY MR. BAKER:

<p style="text-align: right;">Page 230</p> <p>1 Q. Okay.</p> <p>2 A. And it should have been</p> <p>3 "potentially suspicious." And later on</p> <p>4 as our program evolved, we deferred to</p> <p>5 that, so the suspicious term is -- this</p> <p>6 is -- in this document, that is not being</p> <p>7 used properly.</p> <p>8 Q. This document says that you</p> <p>9 define a suspicious order as one that</p> <p>10 meets that criteria that you just read,</p> <p>11 correct?</p> <p>12 MS. MILLER: Objection.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Let's read it again. This</p> <p>15 process of identifying suspicious orders</p> <p>16 says, "In order to determine which items</p> <p>17 on the control IRR report are suspicious,</p> <p>18 the order quantity field is observed by</p> <p>19 the DC IRR analyst for a quantity ordered</p> <p>20 of ten or more. The month-to-date field</p> <p>21 is then observed and compared to Lags 1,</p> <p>22 2, and 3. If the month-to-date quantity</p> <p>23 is at least three times greater than the</p> <p>24 quantities in Lags 1, 2, or 3, then that</p>	<p style="text-align: right;">Page 232</p> <p>1 order monitoring, the IRR report and the</p> <p>2 process of identifying suspicious orders,</p> <p>3 is it not?</p> <p>4 A. According to the e-mail, but</p> <p>5 I -- also I don't see any date on Bates</p> <p>6 Number 737 or 738.</p> <p>7 Q. Okay.</p> <p>8 A. I'm not sure of time and</p> <p>9 place this would have been in place.</p> <p>10 Q. Okay. Let's skip up a</p> <p>11 paragraph. Okay. Let's define what lags</p> <p>12 are, okay.</p> <p>13 Go down here. It says,</p> <p>14 "Component of the control drug" -- "of</p> <p>15 the control IRR report."</p> <p>16 It then talks about what</p> <p>17 lags are. It says, "The month-to-date</p> <p>18 order quantity" -- do you see this right</p> <p>19 here? "The month to date order</p> <p>20 quantity."</p> <p>21 MS. MILLER: Can you direct</p> <p>22 him to where you are in the</p> <p>23 document, Bill?</p> <p>24 MR. BAKER: Yeah. I'm right</p>
<p style="text-align: right;">Page 231</p> <p>1 item is labeled as being suspicious."</p> <p>2 Did I read that correctly?</p> <p>3 A. You read what's on the</p> <p>4 document, yes.</p> <p>5 Q. Okay. And this, of course,</p> <p>6 deals with the components of the control</p> <p>7 IRR report and the process of identifying</p> <p>8 suspicious orders, correct?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: All I can read</p> <p>11 is what's on the document. I</p> <p>12 mean, when I look at the header of</p> <p>13 the e-mail on 736 --</p> <p>14 BY MR. BAKER:</p> <p>15 Q. I'm just reading the headers</p> <p>16 of this document in this e-mail that's</p> <p>17 attached sequentially in Bates sequence.</p> <p>18 Do you see that?</p> <p>19 A. I do. But I just -- I also</p> <p>20 notice that the subject is "Control drug</p> <p>21 suspicious order monitoring," and then</p> <p>22 when I look at this document, I don't see</p> <p>23 that title being used anywhere.</p> <p>24 Q. This is part of suspicious</p>	<p style="text-align: right;">Page 233</p> <p>1 here.</p> <p>2 THE WITNESS: Right where?</p> <p>3 MS. MILLER: Where in the</p> <p>4 paragraph?</p> <p>5 MR. BAKER: Where my finger</p> <p>6 is.</p> <p>7 THE WITNESS: Month-to-date</p> <p>8 order quantity. Okay.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. "The month-to-date order</p> <p>13 quantity states the amount of the item in</p> <p>14 question ordered during the current</p> <p>15 month. Lag 1 is the amount ordered the</p> <p>16 month before, Lag 2 is the amount ordered</p> <p>17 two months before, and Lag 3 is the</p> <p>18 amount ordered three months before."</p> <p>19 Do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Is that what lags meant at</p> <p>22 CVS?</p> <p>23 A. I would just -- I guess I</p> <p>24 could defer to this document. I mean I</p>

<p style="text-align: right;">Page 234</p> <p>1 just -- I don't recall. I don't recall 2 the definition of lags. 3 Q. Okay. Let's see if we can 4 take it in context, okay. 5 Lag 1 is the amount ordered 6 the month before. Would that be the 7 month before the current order? 8 MS. MILLER: Objection. 9 THE WITNESS: I can't 10 interpret it. I mean, I can just 11 go off of what the document says. 12 BY MR. BAKER: 13 Q. Lag 2 is the amount ordered 14 two months before. Is that talking about 15 the amount of control drugs ordered two 16 months before the current month's order? 17 A. That's what the document 18 states. 19 Q. Okay. Lag 3 is the amount 20 ordered three months before. Does that 21 mean the amount of controlled substances 22 that were ordered three months before the 23 current controlled substance order? 24 A. Again, that's what the</p>	<p style="text-align: right;">Page 236</p> <p>1 have been as "potentially suspicious." 2 Q. Okay. Did you ever recall 3 this document? 4 MS. MILLER: Objection. 5 BY MR. BAKER: 6 Q. Did you ever recall it and 7 have it edited? 8 A. I don't -- I didn't even 9 recall seeing this document to begin 10 with. 11 Q. If you use that formula, 12 then technically what that would mean, if 13 you look at it -- let's see if we can 14 break this down. And I want you to 15 explain what this means. If you're 16 talking about Lags 1, 2, and 3. We're 17 talking about the first, second and third 18 month before the current order. Is that 19 accurate or not? 20 MS. MILLER: Objection. 21 Asked and answered. He's already 22 testified that he doesn't remember 23 the document. 24 BY MR. BAKER:</p>
<p style="text-align: right;">Page 235</p> <p>1 document states. 2 Q. Okay. Then skip down. 3 "In order to determine which 4 items on the control drug IRR report are 5 suspicious, the order quantity field is 6 observed by the DC IRR analyst for a 7 quantity ordered of ten or more. The 8 month-to-date field is then observed and 9 compared to Lags 1, 2, and 3. If the 10 month-to-date quantity is at least three 11 times greater than the quantities in Lags 12 1, 2, or 3, then that item is labeled as 13 being suspicious." 14 Is that what it says? 15 A. That is what it says, but 16 again, I would dispute the language being 17 used in the document. 18 Q. You would dispute the 19 language. But the document says what it 20 says? 21 A. The document says what it 22 says. But as I mentioned earlier, there 23 was an evolution, and it's the 24 terminology being used, and it should</p>	<p style="text-align: right;">Page 237</p> <p>1 Q. Would that be an accurate 2 interpretation of what that says? 3 MS. MILLER: Objection. 4 Asked and answered. 5 THE WITNESS: All I can do 6 in this situation is defer to 7 what's on this document. 8 BY MR. BAKER: 9 Q. I agree. You can defer to 10 what's in the document. I'm trying to 11 break it down. 12 A. I can't. I can't. If 13 you're -- you know, if you're asking me 14 is this in fact what was in place, I do 15 not recall if that is in fact what was in 16 place. 17 Q. Okay. 18 A. It's what's written on this 19 document, is what's written on this 20 document. 21 Q. Okay. So when you said I 22 don't recall if that's what was in place, 23 does that mean that you can't recall one 24 way or the other if that's what's in</p>

<p style="text-align: right;">Page 238</p> <p>1 place?</p> <p>2 MS. MILLER: Objection.</p> <p>3 THE WITNESS: You know --</p> <p>4 BY MR. BAKER:</p> <p>5 Q. If you don't recall, you</p> <p>6 don't recall. But tell me, do you recall</p> <p>7 one way or the other if that's what was</p> <p>8 in place?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: All I -- I</p> <p>11 know from my -- my position, you</p> <p>12 know, and really from a project</p> <p>13 manager position of having -- you</p> <p>14 know, ensuring we have a</p> <p>15 suspicious order monitoring in</p> <p>16 place, that we had -- you know, we</p> <p>17 leveraged outside consultants who</p> <p>18 were DEA experts. They delivered</p> <p>19 a product to us. We implemented</p> <p>20 that product. You know, my role</p> <p>21 to ensure was it implemented, was</p> <p>22 it in place, was it being</p> <p>23 reviewed. And I ensured all of</p> <p>24 that was taking place.</p>	<p style="text-align: right;">Page 240</p> <p>1 IRR reports, is to look at that lag</p> <p>2 formula, the three times lag formula?</p> <p>3 MS. MILLER: Objection.</p> <p>4 Asked and answered. He's already</p> <p>5 testified he does not recall.</p> <p>6 MR. BAKER: Okay. See, I</p> <p>7 don't mind if you say, "Object to</p> <p>8 form," but that -- that steps over</p> <p>9 where you are supposed to object.</p> <p>10 If you'd please not do that, I'd</p> <p>11 appreciate it.</p> <p>12 BY MR. BAKER:</p> <p>13 Q. So let me ask this. Was</p> <p>14 this formula used in the context of</p> <p>15 reviewing IRRs when you were at CVS?</p> <p>16 MS. MILLER: Objection.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Was it used?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: There was a</p> <p>21 formula in place.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Okay. And this was the</p> <p>24 formula?</p>
<p style="text-align: right;">Page 239</p> <p>1 The details around it,</p> <p>2 around the lags, and whatnot, I</p> <p>3 just -- you know, I'm not a</p> <p>4 subject matter expert on the</p> <p>5 algorithm that was presented.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. All right. Is that formula</p> <p>8 consistent or inconsistent with the</p> <p>9 algorithm or do you know?</p> <p>10 MS. MILLER: Objection.</p> <p>11 He's already testified that he</p> <p>12 doesn't remember the document.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Okay. Just --</p> <p>15 A. I don't -- I don't recall.</p> <p>16 Q. You don't know, you don't</p> <p>17 recall.</p> <p>18 Was this formula being used</p> <p>19 instead of the algorithm?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. In the context of reviewing</p> <p>23 IRR reports, is that -- is that the</p> <p>24 process of what was being done to review</p>	<p style="text-align: right;">Page 241</p> <p>1 A. I do not know if this was</p> <p>2 the formula.</p> <p>3 Q. Okay. Did you ever ask</p> <p>4 anybody if this was the formula that was</p> <p>5 being used?</p> <p>6 MS. MILLER: Objection.</p> <p>7 THE WITNESS: I don't</p> <p>8 recall.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. Do you know why that was</p> <p>11 even typed up in the context of CVS</p> <p>12 documentation?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: I do not</p> <p>15 recall.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Do you know who came up with</p> <p>18 that formula?</p> <p>19 MS. MILLER: Objection.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. The lag formula that we just</p> <p>22 discussed?</p> <p>23 A. I do not.</p> <p>24 MR. BAKER: I think it's</p>

<p style="text-align: right;">Page 242</p> <p>1 time to break for lunch. Do you 2 want to try to take, what, 3 30 minutes? 4 THE WITNESS: Ten minutes? 5 MR. BAKER: For lunch? 6 MS. MILLER: No. 30 minutes 7 would be great. 8 THE VIDEOGRAPHER: Off the 9 record. The time is 12:29. 10 (Lunch break.) 11 THE VIDEOGRAPHER: We're 12 going back on record. Beginning 13 of Media File Number 6. The time 14 is 1:14. 15 BY MR. BAKER: 16 Q. Mr. Devlin, we just took a 17 lunch break, correct? 18 A. Yes. 19 Q. Okay. I was going over 20 Document Number 68 with you before we 21 left for lunch. We were going over that 22 formula that we were talking about. 23 Do you remember the lag 24 formula, the Lag 1, 2, 3?</p>	<p style="text-align: right;">Page 244</p> <p>1 e-mail dated 1/28/11. Do you see that? 2 A. Yes. 3 Q. All right. And this is an 4 e-mail from Steven Cain to Frank Devlin, 5 and then it's talking about IRR 6 narratives. And then below that, an 7 e-mail dated January 27, 2011, you, Frank 8 Devlin, to Steven Cain regarding the IRR 9 narratives. 10 Do you see that? 11 A. I do. 12 Q. Okay. Would you turn next 13 to the page that talks about those IRR 14 narratives. It talks about the 15 components of the IRR -- of the control 16 IRR report, correct? 17 A. That's what it states. 18 Q. Okay. Do you remember this 19 document at all? 20 A. I really don't recall it. 21 Q. You don't recall it? 22 A. No. 23 Q. Okay. Go to Page 2 of that 24 document. It talks about the suspicious</p>
<p style="text-align: right;">Page 243</p> <p>1 MS. MILLER: Objection. 2 BY MR. BAKER: 3 Q. Do you remember Document 4 Number 68, Exhibit 68, that we were going 5 over? 6 A. I recall, yes. 7 Q. Okay. Let me show you 8 Exhibit Number 68-A. 9 (Document marked for 10 identification as Exhibit 11 CVS-Devlin-P-68-A.) 12 MR. BAKER: Let me go off 13 record for just a second. 14 THE VIDEOGRAPHER: We're 15 going off record. The time is 16 1:15. 17 (Brief pause.) 18 THE VIDEOGRAPHER: Going 19 back on record. Beginning of 20 Media File Number 7. The time is 21 1:17. 22 BY MR. BAKER: 23 Q. Okay. Mr. Devlin, would you 24 look at 68-A please. It starts with an</p>	<p style="text-align: right;">Page 245</p> <p>1 order process. This is another formula 2 that I'm going to ask you about. It 3 says, bullet -- "Bullet Number 1, the DC 4 IRR analyst will review IRR for order 5 quantity that is flagged as potentially 6 suspicious." 7 Do you see that? 8 MS. MILLER: Objection. 9 Formula, you said the word 10 "formula." 11 MR. BAKER: Okay. 12 BY MR. BAKER: 13 Q. Let me ask you what this 14 document says. "Suspicious order 15 process. Bullet Number 1, DC IRR analyst 16 will review IRRs for order quantity that 17 has flagged as potentially suspicious." 18 Is that what it says? 19 A. That's what it says. 20 Q. Okay. Now let's talk about 21 that. An IRR is an item review report, 22 correct? 23 A. Yes. 24 Q. Flagged means what?</p>

<p style="text-align: right;">Page 246</p> <p>1 A. That would be something that 2 you would -- you would want to take an 3 initial look at. 4 Q. Okay. What causes it to be 5 flagged? 6 A. I believe it would be 7 something based off of the algorithm. 8 Q. And would the algorithm be 9 part of the software program? 10 MS. MILLER: Objection. 11 BY MR. BAKER: 12 Q. Is the algorithm built into 13 the software program? 14 MS. MILLER: Objection. 15 BY MR. BAKER: 16 Q. What is the algorithm? 17 A. I don't recall the 18 algorithm. 19 Q. What is that in the context 20 of the software program? 21 MS. MILLER: Objection. 22 MR. BAKER: Look, I'm just 23 trying to get through this without 24 a lot of interruption. And I want</p>	<p style="text-align: right;">Page 248</p> <p>1 all that kind of business. It's baloney, 2 and you know it. 3 So let's -- let's go 4 through -- 5 MS. MILLER: Mr. Baker, 6 Mr. Baker, respectfully, he 7 doesn't need to be lectured -- 8 MR. BAKER: Well, he does, 9 because he's intentionally 10 avoiding the questions. 11 MS. MILLER: -- he's 12 testifying to the best of his 13 recollection. 14 BY MR. BAKER: 15 Q. Okay. So here we go. Look 16 at the document. Suspicious order 17 process. Do you see it? 18 Do you see it with your 19 eyeballs? 20 MS. MILLER: Objection. 21 BY MR. BAKER: 22 Q. Do you see it? 23 A. Which Bates number are you 24 referencing?</p>
<p style="text-align: right;">Page 247</p> <p>1 to make sure that I get this on 2 record what he's talking about 3 with an algorithm. He's in charge 4 of the doggone program. 5 BY MR. BAKER: 6 Q. Can you just testify about 7 the program versus "I don't remember," "I 8 don't recall," and let's get through 9 this. 10 Can we just do that? 11 MS. MILLER: Mr. Baker, he's 12 testifying to the best of his 13 recollection. And I'm entitled to 14 object on the record. 15 MR. BAKER: Agreed. 16 BY MR. BAKER: 17 Q. But -- but this "I don't 18 recall," "I don't know," is ridiculous 19 because you were the man in charge of the 20 department, and you contracted to get 21 this thing done. 22 So let's try to get through 23 the questions and answers without a lot 24 of "I don't know," "I don't recall," and</p>	<p style="text-align: right;">Page 249</p> <p>1 Q. Suspicious order process, 2 right in front of your eyeballs, right 3 here. Do you see that? 4 A. Which Bates number are you 5 referencing? 6 Q. I'm looking at 83970. 7 A. I do see that. 8 Q. Okay. It says, "Suspicious 9 order process." 10 Do you see those words? 11 A. I do. 12 Q. Okay. Read that first 13 bullet point, please? 14 A. "DC IRR analyst will review 15 IRR for order quantity that is flagged as 16 potentially suspicious." 17 Q. Okay. What does the word 18 "flagged" mean in the context of that 19 sentence? 20 MS. MILLER: Objection. 21 Asked and answered. 22 BY MR. BAKER: 23 Q. What does it mean? 24 A. I believe it would be</p>

<p style="text-align: right;">Page 250</p> <p>1 something that, based on the algorithm, 2 it would put outside the parameters and 3 something for the IRR analyst to take a 4 look at. 5 Q. What algorithm? 6 A. The one provided by Buzzeo's 7 company. 8 Q. What does that algorithm 9 have to do with the suspicious order 10 monitoring process? 11 A. It's part of the overall 12 program. 13 Q. And what is the score at 14 which an item is flagged as one of being 15 potentially suspicious? 16 MS. MILLER: Objection. 17 Asked and answered. 18 BY MR. BAKER: 19 Q. You don't know -- 20 MS. MILLER: Give me -- give 21 me a chance to respond. 22 BY MR. BAKER: 23 Q. Do -- do you know? 24 A. Do not recall.</p>	<p style="text-align: right;">Page 252</p> <p>1 BY MR. BAKER: 2 Q. Do you understand that? 3 A. I understand what was in the 4 document earlier. 5 Q. Do you remember the document 6 that I showed you, Document Number 150? 7 MS. MILLER: Do you have 8 that in front of you, Frank? 9 THE WITNESS: I do. 10 BY MR. BAKER: 11 Q. Okay. Turn to Page 3 of 12 that document, 114644. Read that 13 sentence that's highlighted for you. 14 That's underlined. 15 A. "The model has been designed 16 so that any order with a score of 0.15 or 17 higher is identified as suspicious, 18 pended, and should be investigated 19 further." 20 Q. What does that mean? 21 MS. MILLER: Objection. 22 THE WITNESS: Sir, alls I 23 know is that was a part of the 24 algorithm. I do not recall the</p>
<p style="text-align: right;">Page 251</p> <p>1 Q. We just went through several 2 documents that talk about a .15 score. 3 Do you recall that? 4 A. I recall seeing those 5 documents. 6 Q. Okay. Are you saying that 7 you don't recall that .15 was the score 8 at which that program was designed to 9 flag an order? 10 MS. MILLER: Objection. 11 BY MR. BAKER: 12 Q. Are you saying that? 13 MS. MILLER: Asked and 14 answered. 15 THE WITNESS: I do not 16 recall the components of the 17 algorithm. 18 BY MR. BAKER: 19 Q. Okay. I didn't ask you to 20 recall the components of the algorithm. 21 I'm asking do you recall the score at 22 which an order was to be flagged. Do you 23 understand that? 24 MS. MILLER: Objection.</p>	<p style="text-align: right;">Page 253</p> <p>1 details of the algorithm. 2 BY MR. BAKER: 3 Q. What does a score of .15 4 mean? 5 MS. MILLER: Objection. 6 Asked and answered. 7 THE WITNESS: I don't know. 8 BY MR. BAKER: 9 Q. What does "identified as 10 suspicious, pended" mean? 11 A. Identified and pended would 12 be to take a look at for further 13 investigation. 14 Q. Investigation of what? 15 A. An order. 16 Q. How is it investigated? 17 A. A variety of steps. 18 Q. Tell me those steps. 19 A. The IRR analyst would take a 20 look at the flagged order and from other, 21 I guess tools at their disposal, would 22 determine if it was something that 23 required further investigation. So some 24 of those tools to be used would be</p>

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1 looking at past, I guess it would be
2 looking at what is actually flagging it
3 in the model. Then it could take a look
4 at the -- having access to the
5 prescription drug monitoring report. It
6 could involve phone calls with field loss
7 prevention. It could involve discussions
8 with the store pharmacist. It could
9 involve looking at prescriptions coming
10 out of the store. Are they, I guess,
11 outside normal parameters from perhaps
12 comparable stores. There's a variety of
13 components and I'm probably not touching
14 upon all of them.
15 Q. And that's to be done by
16 the -- who?
17 A. That would be the IRR
18 analyst.
19 Q. Okay. And the IRR analyst
20 would be who in 2011?
21 A. I believe in 2011 it would
22 have been a person based in Knoxville.
23 Q. And who was that?
24 A. I didn't recall her name.

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1 Q. And was that process that
2 you just talked about, is that called due
3 diligence?
4 A. I would -- I know I'm not
5 touching upon all of it, but that would
6 be from what I can recall.
7 Q. Is that called due
8 diligence?
9 MS. MILLER: Objection.
10 THE WITNESS: I don't recall
11 using that terminology.
12 BY MR. BAKER:
13 Q. What is due diligence in the
14 context of suspicious order monitoring?
15 MS. MILLER: Objection.
16 THE WITNESS: I didn't use
17 that terminology.
18 BY MR. BAKER:
19 Q. Would you have any
20 expectation that the person conducting
21 that review used due diligence?
22 MS. MILLER: Objection.
23 THE WITNESS: What's the --
24 BY MR. BAKER:

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1 Q. Go ahead.
2 A. What's the definition of due
3 diligence?
4 Q. I'm asking you. You're the
5 former CVS director of loss prevention --
6 of logistics and loss prevention. I'm
7 asking you, what was due diligence in the
8 context of suspicious order monitoring
9 investigations of pended orders?
10 A. That's not a term that I can
11 recall using.
12 Q. You never used that term?
13 A. I don't recall using due
14 diligence.
15 Q. Fair enough. Would you have
16 had any expectation that the person
17 conducting that review would use due
18 diligence in the context of their review?
19 MS. MILLER: Objection.
20 BY MR. BAKER:
21 Q. Would you?
22 A. I would expect the person
23 would investigate the situation.
24 Q. Would you expect the person

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1 to do that list of things that you just
2 listed?
3 A. That would probably be a
4 portion of it.
5 Q. Okay. And if that person
6 did not do those things, would that be
7 below your expectations of what they
8 should have done, you being the director
9 of the department out of which suspicious
10 order monitoring was assigned at the
11 time?
12 MS. MILLER: Objection.
13 THE WITNESS: I would have
14 to have more details around the
15 situation.
16 BY MR. BAKER:
17 Q. Do you know what percentage
18 of the time the person who was reviewing
19 those pended orders would conduct such an
20 investigation to the extent of what you
21 just described?
22 MS. MILLER: Objection.
23 THE WITNESS: I would not be
24 aware of the time involved.

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1 BY MR. BAKER:
2 Q. What percentage of the
3 pended orders would you have an
4 expectation that that person reviewing
5 the orders for investigation would
6 conduct the steps that you outlined to
7 investigate? What percentage of those
8 orders would you expect them to go
9 through and do that type of
10 investigation?
11 MS. MILLER: Objection.
12 THE WITNESS: I can't
13 recall. I can't recall what time
14 required.
15 BY MR. BAKER:
16 Q. I didn't ask time required.
17 What percentage of the pended orders that
18 were pended would you have an expectation
19 that the analyst would then go forward
20 and do that type of an investigation?
21 What percentage number?
22 A. Sitting here, I do not
23 recall a percentage.
24 Q. Okay. Would you expect it

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1 to be close to 100 percent?
2 MS. MILLER: Objection.
3 BY MR. BAKER:
4 Q. I mean, you have a pended
5 order. Would you not expect the person
6 who is the analyst to do that type of
7 investigation?
8 MS. MILLER: Objection.
9 THE WITNESS: If --
10 BY MR. BAKER:
11 Q. Go ahead.
12 A. If an -- if an order was
13 flagged, they would look into it further,
14 I would expect that to take place.
15 Q. Okay. To the extent that
16 you just described, correct?
17 MS. MILLER: Objection.
18 BY MR. BAKER:
19 Q. To the extent that you
20 described?
21 A. A portion of what I
22 described.
23 Q. Okay. And if the person did
24 not conduct that type of investigation,

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1 would that have been a violation of the
2 policy of how you expected them to
3 investigate that order?
4 MS. MILLER: Objection.
5 THE WITNESS: I would have
6 to know the circumstances of the
7 order. Not if -- it's
8 theoretical. I would need to know
9 the details.
10 BY MR. BAKER:
11 Q. Did you ever review any IRR
12 investigative report during the whole
13 time that you were employed at CVS?
14 MS. MILLER: Objection.
15 BY MR. BAKER:
16 Q. Did you?
17 MS. MILLER: Objection.
18 BY MR. BAKER:
19 Q. Let me repeat the question.
20 During the entire time that you were
21 employed at CVS, did you ever once review
22 an item review report investigative
23 report?
24 MS. MILLER: Objection.

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1 BY MR. BAKER:
2 Q. Did you?
3 MS. MILLER: Objection.
4 THE WITNESS: I'm not sure
5 what you're referencing.
6 BY MR. BAKER:
7 Q. Did you ever review any
8 written documentation of an investigation
9 that was done of a pended order?
10 A. Not that I can recall.
11 MR. BAKER: Go to 68-A
12 again, please. Pull it up,
13 please.
14 BY MR. BAKER:
15 Q. Go to Page 2, 68-A. All
16 right. The next bullet point, this says,
17 "The month-to-date field is then observed
18 and compared to Lags 1 through 6. Do you
19 see that?
20 A. What Bates? Actually, I
21 have the wrong document.
22 MS. MILLER: Was it 68-A and
23 attachment?
24 MR. BAKER: 68 -- 68-A

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1 attachment.
2 BY MR. BAKER:
3 Q. Yes, sir. Look under
4 suspicious order process, Page 2.
5 A. Okay.
6 Q. Look under Bullet Point
7 Number 2.
8 Do you see that?
9 A. Yes.
10 Q. And remember, Bullet Point
11 Number 1, I just finished asking you
12 about, the DC IRR analyst will review IRR
13 for order quantity that has flagged as
14 potentially suspicious. You recall that,
15 correct? We just went over that, right?
16 A. That's what you read, yes.
17 Q. Okay. Now we're going over
18 Bullet Point Number 2. It says, "The
19 month-to-date field is then observed and
20 compared to Lags 1 through 6."
21 Do you see that?
22 A. I see that on the document,
23 yes.
24 Q. Okay. It says, "If a

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1 month-to-date quantity is out of line
2 compared to the store lag, as well as the
3 ordering patterns of the network, the
4 order will be labeled suspicious."
5 Do you see that?
6 A. I do.
7 Q. Okay. What does the phrase
8 "out of line" mean?
9 MS. MILLER: Objection.
10 THE WITNESS: I didn't write
11 this document. So I'm not sure
12 exactly what he meant.
13 BY MR. BAKER:
14 Q. Well, did this document ever
15 get brought to your attention when you
16 worked at CVS?
17 A. It appears that it was sent
18 to me. But I don't recall the document.
19 Q. Okay. And it appears that
20 it was sent to you in February of 2011;
21 is that right?
22 A. Correct.
23 Q. Okay. And you don't sit
24 here and doubt that it was sent to you in

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1 2011; is that correct? You're not
2 doubting that today, are you?
3 MS. MILLER: Objection.
4 THE WITNESS: It may have
5 been sent, but I don't recall
6 reading it.
7 BY MR. BAKER:
8 Q. Okay. And why would this
9 have been sent to you? What was your
10 position within the company that would
11 have caused something like this to be
12 sent to you?
13 MS. MILLER: Objection.
14 THE WITNESS: I was director
15 of logistics, loss prevention.
16 BY MR. BAKER:
17 Q. And what did you as director
18 of loss prevention -- logistics loss
19 prevention have to do with suspicious
20 order monitoring while you were employed
21 at CVS? What did you do?
22 A. I was involved in
23 implementing the program.
24 Q. Okay. And if you were

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1 involved in implementing the program and
2 this is a memo describing suspicious
3 order process, and the memo says, "If a
4 month-to-date quantity is out of line
5 compared to the store lag as well as the
6 ordering patterns of the network, the
7 order will be labeled suspicious," are
8 you telling me that you don't know what
9 the words "out of line" means?
10 MS. MILLER: Objection.
11 THE WITNESS: Again, I
12 didn't write the document. I'm
13 not sure what the terminology
14 means.
15 BY MR. BAKER:
16 Q. Did you ever ask anybody
17 what that means, "out of line," how
18 that's defined?
19 A. Sir, I don't recall the
20 document.
21 Q. Okay. Did you ever ask
22 anybody what the words "out of line"
23 mean? That's what I'm asking you.
24 A. I do not recall.

<p style="text-align: right;">Page 266</p> <p>1 Q. Okay. Do you know how far 2 out of line a month-to-date quantity 3 order would have to be in order for it to 4 be considered suspicious? 5 MS. MILLER: Objection. 6 THE WITNESS: I don't recall 7 the term "out of line." 8 BY MR. BAKER: 9 Q. Did you ever review any 10 investigations, any written documentation 11 of investigations of orders that were out 12 of line when you were at CVS in that 13 department, the director of logistics, 14 loss prevention? 15 MS. MILLER: Objection. 16 BY MR. BAKER: 17 Q. Did you? 18 MS. MILLER: Objection. 19 THE WITNESS: Not that I 20 recall. 21 BY MR. BAKER: 22 Q. During the entire time that 23 you were director of logistics loss 24 prevention at CVS, did anybody ever</p>	<p style="text-align: right;">Page 268</p> <p>1 A. I'm on that page. 2 Q. Tell me when you're there. 3 A. I am there. 4 Q. Okay. Do you see where 5 that's entitled Prevention and Monitoring 6 of Control Drug and PSE Suspicious 7 Orders. Do you see that? 8 A. I do. 9 Q. Okay. It talks about 10 prevention and -- prevention and 11 monitoring of control drug suspicious 12 orders. Do you see that? 13 A. Yes, sir. 14 Q. Okay. Now, go to the -- go 15 to the bottom of that page. It says, 16 "DEA regulations require that all 17 distributors must design a system to 18 monitor, detect and report any suspicious 19 control drug orders." 20 Do you see that? 21 A. Yes, sir. 22 Q. When you were at CVS did you 23 read this document? 24 A. I just -- I don't recall the</p>
<p style="text-align: right;">Page 267</p> <p>1 present to you an order from a CVS 2 pharmacy to a CVS distribution center 3 that had a month-to-date quantity that 4 was out of line compared to the store 5 Lags 1 through 6 as well as the ordering 6 patterns of the network to where that 7 order was labeled as suspicious? 8 MS. MILLER: Objection. 9 THE WITNESS: Not that I 10 recall. 11 MR. BAKER: Let's go to 97. 12 MS. MILLER: Is that a new 13 exhibit? 14 MR. BAKER: Yes. 15 It's an existing one. 16 MS. MILLER: Oh, right. 17 BY MR. BAKER: 18 Q. All right. Go to page Bates 19 Number 88996. 20 A. Excuse me. What is the 21 Bates number? 22 Q. 88996. Are you there? 23 A. 88996? 24 Q. Yes, sir.</p>	<p style="text-align: right;">Page 269</p> <p>1 document. 2 Q. Okay. Go to the next page. 3 It talks about items reviewed. Do you 4 see that? 5 A. Yes. 6 Q. It says, "CVS has 7 established control drug order thresholds 8 which will flag on the IRR, item review 9 report, as well as field loss prevention 10 NovaStar reports." 11 Do you see that? 12 A. Yes. 13 Q. Is that the flags that we're 14 talking about when we talk about the 15 other flag that we were talking about 16 in -- in Document Number 68-A? 17 MS. MILLER: Objection. 18 BY MR. BAKER: 19 Q. Is that the type of flag we 20 are talking about? 21 A. I don't know if I can quite 22 interpret that, because I also see the 23 field loss prevention software reports. 24 Q. Let's move to the next</p>

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1 document.
2 MR. BAKER: Let's go to 211
3 please.
4 (Document marked for
5 identification as Exhibit
6 CVS-Devlin-P-211.)
7 MR. BAKER: This is marked
8 Devlin 211 for some reason. We'll
9 take it as it is.
10 BY MR. BAKER:
11 Q. All right. This is an
12 e-mail dated 2/24/10. Do you see it?
13 A. Yes.
14 Q. Okay. Now, this is, if you
15 look at the bottom of that page it says
16 from John Mortelliti to Ellen Demetrius
17 and to Frank Devlin, that's you, right?
18 Correct?
19 A. It appears that's what's on
20 the document, yes.
21 Q. All right. And there's two
22 or three other people. Do you see that?
23 A. Yes.
24 Q. Okay. The subject is

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1 adjustment to the CVS SOM. Do you see
2 that?
3 A. Yes.
4 Q. It says, "Ellen, would it be
5 possible to do this for Friday? Also,
6 with expenses being tight right now,
7 would we be able to turn off the control
8 drug IRR for all the DCs except
9 Lumberton? The report is very thick and
10 costly to run daily."
11 Do you see that?
12 A. I do see that.
13 Q. Explain to me what that
14 means, "the report is very thick and
15 costly to run daily."
16 You are on this e-mail. I
17 want you to tell me what that means.
18 MS. MILLER: Objection.
19 BY MR. BAKER:
20 Q. What does that mean?
21 A. Again, I don't recall this
22 particular e-mail. I could attempt to
23 interpret what it means.
24 Q. Is it a discussion of the

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1 IRR?
2 A. Yes.
3 Q. All right. The IRR report
4 being very thick and costly to run daily,
5 is that what that says?
6 A. That's what it says.
7 Q. Okay. And is this at a time
8 when we have one person doing the review?
9 MS. MILLER: Objection.
10 THE WITNESS: Again, as I
11 mentioned earlier, I'm not exactly
12 sure of time frames.
13 BY MR. BAKER:
14 Q. Is the IRR a sample of a
15 flagged order?
16 MS. MILLER: Objection.
17 BY MR. BAKER:
18 Q. Is it or not?
19 A. Can you repeat that again?
20 MS. MILLER: Objection.
21 BY MR. BAKER:
22 Q. Is the IRR a flagged order?
23 MS. MILLER: Objection.
24 THE WITNESS: No.

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1 BY MR. BAKER:
2 Q. What does the IRR represent?
3 A. Item review report.
4 Q. Of what?
5 A. Well, it could have
6 potential -- potential suspicious orders.
7 Q. Correct, a potential
8 suspicious order. Is that one that was
9 flagged under the --
10 A. Yeah, that would be
11 outside --
12 Q. Okay.
13 A. Outside the parameters, yes.
14 Q. Okay. So it would be a
15 flagged order?
16 A. You could use that term.
17 Q. Okay. So let's try to use
18 that term so we are on the same page.
19 If we're talking about a
20 flagged order, you now know what we're
21 talking about, correct?
22 MS. MILLER: Objection.
23 BY MR. BAKER:
24 Q. Right?

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1 A. Sure.
2 Q. Okay. And tell me what you
3 mean by a flagged order.
4 A. Be something that you'd want
5 to take a look at.
6 Q. Okay. Because -- how did it
7 become flagged under the suspicious order
8 monitoring system within CVS? At that
9 time in 2010, how would it get flagged?
10 A. I believe it would be driven
11 by the algorithm that was put in place
12 against the store orders. And that would
13 flag potential orders to take a look at.
14 Q. Okay. And to take a look at
15 them, would that require an
16 investigation?
17 A. Yes, to varying degrees.
18 Q. Okay. And if this was a
19 very thick and costly to run daily
20 report, how many are we talking about?
21 How many flagged orders are we talking
22 about at that point?
23 A. I wouldn't know.
24 Q. Did you go check to find

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1 out?
2 MS. MILLER: Objection.
3 THE WITNESS: No.
4 BY MR. BAKER:
5 Q. Do you know what was being
6 done to investigate those flagged orders,
7 if anything?
8 MS. MILLER: Objection.
9 THE WITNESS: I know we
10 had -- the IRR process was in
11 place. It was being reviewed on a
12 daily basis. Anything outside
13 those parameters was being --
14 being reviewed. There were
15 varying degrees of investigation
16 that would take place.
17 BY MR. BAKER:
18 Q. Do you know what
19 documentation there was of that
20 investigation, if any?
21 MS. MILLER: Objection.
22 THE WITNESS: I'm not sure
23 on the documentation.
24 BY MR. BAKER:

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1 Q. Was the documentation under
2 the policies and procedures in effect at
3 that time with CVS supposed to be
4 attached to the IRR?
5 MS. MILLER: Objection.
6 THE WITNESS: I -- again,
7 you know, I apologize for just not
8 recalling dates. But this -- you
9 know, as I mentioned before, this
10 has been an evolving process. And
11 exact dates, and if you're saying
12 at this particular time, I'm not
13 sure where we were in that
14 process.
15 BY MR. BAKER:
16 Q. Okay. You see here the next
17 sentence says, "Once we get the formula
18 acceptable, we can turn it back on for
19 the network."
20 Do you see that?
21 A. I do see that.
22 Q. Okay. Go to the next page.
23 This is an e-mail from Ellen Demetrius to
24 Frank Devlin. It's a pourover from the

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1 bottom of the -- of the page before. Go
2 to the page before.
3 Do you see here, this e-mail
4 right here, February 16, 2010, from Ellen
5 Demetrius to you, Frank Devlin, do you
6 see that?
7 MS. MILLER: You mean at the
8 bottom of the document on the
9 first page?
10 MR. BAKER: Bottom of the
11 document.
12 BY MR. BAKER:
13 Q. Do you see that? And then
14 it goes over to the next page. It says,
15 "Hi Frank."
16 Do you see that?
17 A. I see the "hi Frank," yes,
18 okay.
19 Q. Okay.
20 A. All right.
21 Q. And that's the e-mail from
22 Ellen to you, correct?
23 A. Let me take a look at it. I
24 do see that.

<p style="text-align: right;">Page 278</p> <p>1 Q. Okay. Let's read the 2 e-mail. 3 "Hi Frank. I just spoke to 4 John and Rick about your request. What 5 we would like to do is have you pick a 6 day that you would like us to work on, 7 then we will run and rerun the different 8 scores, .16, .17, et cetera, until you 9 are satisfied with the results. Once you 10 are satisfied, we will change production 11 to the new score for controls. Is that a 12 satisfactory plan? Thanks, Ellen." 13 Do you see that? 14 A. I do. 15 Q. Do you see where you 16 responded to that, Frank Devlin? Do you 17 see where that -- you responded to it? 18 A. I'm reading it now. 19 MS. MILLER: Which portion 20 of the chain are you referring to 21 as a response? 22 BY MR. BAKER: 23 Q. Did you respond to it? 24 Let's go back up to the</p>	<p style="text-align: right;">Page 280</p> <p>1 February 15, 2010. Do you see this 2 portion of the e-mail string? 3 A. "This is a follow-up on our 4 telephone call"? 5 Q. It says, "Adjustment to the 6 CVS" -- "CVS SOM." 7 Do you see that? 8 A. I do. 9 Q. Okay. This is between you 10 and Robert Williamson, February 15, 2010. 11 Do you see that? 12 A. I do. 13 Q. Okay. Do you see there 14 where it says, "The score used for 15 pending is currently .15"? 16 A. I do see that. 17 Q. Is that a -- is that 18 consistent with the -- the score that was 19 used for flagging orders? 20 MS. MILLER: Objection. 21 THE WITNESS: That's what it 22 states in this e-mail. For me to 23 testify that indeed was the score 24 in place at that date, I don't --</p>
<p style="text-align: right;">Page 279</p> <p>1 e-mail. Let's repeat it. 2 It says, "Hi Frank. I just 3 spoke to John and Rick about your 4 request. What we would like to do is 5 have you pick a day that you would like 6 us to work on, then we will run and rerun 7 the different scores, .16, .17, et 8 cetera, until you are satisfied with the 9 results. Once you are satisfied, we will 10 change production to the new scores for 11 controls. Is that a satisfactory plan? 12 Thanks, Ellen." 13 Do you see that? 14 A. I do see that. 15 Q. Okay. Were you involved 16 with the process of changing the score on 17 the algorithm from .15 to a number above 18 .15? 19 A. I -- I don't -- I don't 20 recall the situation, from looking at the 21 e-mail. I'm sure I was involved in the 22 process to some extent, I just don't 23 recall the particulars around it. 24 Q. Look down at the bottom,</p>	<p style="text-align: right;">Page 281</p> <p>1 I don't recall a -- 2 BY MR. BAKER: 3 Q. Okay. But it looks like if 4 you take this e-mail string up at top, 5 that you are directly involved at least 6 with having the score raised above .15. 7 Am I right or wrong? 8 MS. MILLER: Objection. 9 THE WITNESS: I'm reading, 10 I'm just reading through the 11 e-mails. And just from what I 12 recall, I do recall being on some 13 conference calls and discussing 14 the score. 15 As far as particular 16 activities I took, I just -- I 17 don't recall what I did. 18 BY MR. BAKER: 19 Q. Okay. But the documentation 20 indicates that you were involved in those 21 activities; is that right? 22 A. And I -- then I testified 23 that I know that I was involved and 24 participated in conference calls.</p>

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1 Q. Okay. You talked briefly
2 about what you had as an expectation of a
3 store -- of -- of an analyst when an
4 investigation would be conducted. Do you
5 recall that testimony?

6 A. I recalled discussing some
7 components of it, yes.

8 (Document marked for
9 identification as Exhibit
10 CVS-Devlin-P-69.)

11 BY MR. BAKER:

12 Q. Let me show you what's
13 marked as Exhibit 69.

14 This is called "SOM due
15 diligence guidance document, questions to
16 consider when calling the pharmacy."

17 Do you see that?

18 A. I do.

19 Q. Have you ever seen this --

20 MS. MILLER: Bill, was this
21 attached to an e-mail?

22 MR. BAKER: I don't know. I
23 don't know.

24 MS. MILLER: There's no --

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1 it appears to be undated. Do you
2 have --

3 MR. BAKER: I'm just going
4 with the CVS documentation. I'm
5 going to ask him if he knows about
6 this.

7 BY MR. BAKER:

8 Q. Do you know anything about
9 it, the due diligence questions, the SOM
10 due diligence guidance document? Are you
11 aware of this document at all?

12 A. Again, I don't -- I don't
13 recall it.

14 Q. Okay. Was there any sort of
15 document in place at CVS when you worked
16 there that discussed what was to be done
17 by analysts who were reviewing IRRs when
18 conducting investigations related to the
19 IRRs?

20 A. I'm sure there were
21 guidelines provided, yes.

22 Q. Okay.

23 A. I don't recall a particular
24 guideline or when it was produced.

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1 Q. The guidelines that were
2 provided, did they have guidelines
3 consistent with what you talked about, at
4 least earlier in this deposition about
5 what your expectations were for
6 investigations?

7 A. I'd have to look at the
8 documents. I mean, what I testified to,
9 that's all I could recall off the top of
10 my head.

11 Q. But the documents that you
12 reviewed, were they consistent with what
13 you testified to?

14 MS. MILLER: Objection.

15 THE WITNESS: Which?

16 BY MR. BAKER:

17 Q. The part about contacting
18 the pharmacy, doing the comparison of the
19 prior orders to the current orders, that
20 list of things that you talked about?

21 A. Where?

22 Q. Your testimony.

23 A. Oh, what I spoke about?

24 Q. Yes.

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1 MS. MILLER: Are you --

2 BY MR. BAKER:

3 Q. Was there a document that
4 had all the stuff listed in it?

5 A. Oh, I don't know. I don't
6 know, sir.

7 Q. You don't know?

8 A. I don't know. You had asked
9 me what they would do. I was just
10 harkening back what I could recall was
11 going on at the time.

12 Q. Okay. Let's move to the
13 next document, Number 2 -- Number 140.

14 (Document marked for
15 identification as Exhibit
16 CVS-Devlin-P-140.)

17 BY MR. BAKER:

18 Q. Take a look at this. This
19 is a suspicious order monitoring for
20 PSE/control drugs. Summary of key
21 concepts and procedures dated August 27,
22 2010.

23 Have you ever seen this
24 document?

<p style="text-align: right;">Page 286</p> <p>1 A. Again, I don't -- I don't I 2 don't recall the particulars of it, no. 3 Q. Okay. Go to Page 3 of that 4 document. It's labeled 61193. It says, 5 "Purpose of item inventory review 6 report." 7 Do you see that? 8 A. "Purpose of inventory review 9 report"? 10 Q. Yes, sir. 11 A. I see that. 12 Q. In the CVS policy and 13 procedure, it's called an item review 14 report. And this calls it an inventory 15 review report. Is that the same thing or 16 a different thing? 17 A. I believe so because I 18 mentioned earlier, there's kind of an 19 evolution of terminology being used. 20 Q. Right. And it says here 21 that the purpose of the inventory review 22 report, the IRR, is to prevent diversion 23 of PSE/EPH/control drug products, 24 correct?</p>	<p style="text-align: right;">Page 288</p> <p>1 loss prevention NovaStor reports." 2 Do you see that? 3 A. Yes. 4 Q. Okay. It says, "These 5 thresholds are the primary tool to 6 prevent stores from purchasing excessive 7 or potentially suspicious control drug 8 orders." 9 Do you see that? 10 A. I do. 11 Q. Okay. And what would be the 12 reason behind that, that there would be a 13 need to prevent stores from purchasing 14 excessive or potentially suspicious 15 control drug orders? 16 A. Can you repeat that? 17 Q. What would be the reasoning 18 behind the need to prevent stores from 19 purchasing excessive or potentially 20 suspicious control drug orders? 21 MS. MILLER: Objection. 22 BY MR. BAKER: 23 Q. Do you have an answer to 24 that question, sir?</p>
<p style="text-align: right;">Page 287</p> <p>1 A. That's what it states, yes. 2 Q. Okay. What is diversion? 3 MS. MILLER: Objection. 4 BY MR. BAKER: 5 Q. Go ahead. What is 6 diversion? 7 A. Diversion, I would look at 8 potential theft. 9 Q. Anything other than theft? 10 A. I think theft is what comes 11 to the top of my mind. 12 Q. Okay. Go back to 13 Exhibit 97. And go to Bates number 14 88997. Are you there? 15 A. Yes. 16 Q. It says -- at Paragraph 17 Number 2 at the top, do you see that? 18 A. Items reviewed? 19 Q. Yes. It says, "CVS has 20 established control drug order thresholds 21 which will flag on the IRR." 22 Do you see that? 23 A. I do. 24 Q. Okay. "As well as field</p>	<p style="text-align: right;">Page 289</p> <p>1 A. Can you repeat it one more 2 time? 3 Q. What would be the reason for 4 these thresholds to be the primary tool 5 to prevent stores from purchasing 6 excessive or potentially suspicious 7 control drug orders? 8 A. Well, you'd want to ensure 9 that there's proper inventory management 10 of the product. 11 Q. Why would there be a need to 12 prevent the store from purchasing an 13 excessive or potentially suspicious 14 control drug order? 15 A. Again, would come down to -- 16 MS. MILLER: Objection. 17 THE WITNESS: -- come down 18 to proper inventory management. 19 BY MR. BAKER: 20 Q. Other than that? 21 A. That would certainly be a 22 component. That was -- 23 Q. What's the whole reason that 24 you're doing this suspicious order</p>

<p style="text-align: right;">Page 290</p> <p>1 monitoring system to begin with?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. Tell me.</p> <p>5 A. To ensure we're meeting DEA</p> <p>6 regulations.</p> <p>7 Q. Of monitoring of controlled</p> <p>8 substance to prevent what?</p> <p>9 MS. MILLER: Objection.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. To prevent what?</p> <p>12 A. I would say improper use of</p> <p>13 control drugs.</p> <p>14 Q. Diversion, correct?</p> <p>15 MS. MILLER: Objection.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Is that correct?</p> <p>18 A. If that's the term you want</p> <p>19 to use.</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Okay. Is that the term</p> <p>23 that's being used in your documentation</p> <p>24 here. Go back to the document that I</p>	<p style="text-align: right;">Page 292</p> <p>1 A. I'm reading it as you speak.</p> <p>2 Q. I'm asking, do you see the</p> <p>3 word responsibilities? I'll go through</p> <p>4 them with you. Do you see the word</p> <p>5 responsibilities?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. It says DC Rx. What</p> <p>8 is a DC Rx? What does that mean?</p> <p>9 A. As I mentioned earlier, that</p> <p>10 would be DC pharmacy.</p> <p>11 Q. Okay. "Review IRR daily and</p> <p>12 determine whether variances are within</p> <p>13 acceptable ranges."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Okay. Is the IRR a daily</p> <p>17 report?</p> <p>18 A. Yes. I believe so, yes.</p> <p>19 Q. Okay. What is it a daily</p> <p>20 report of?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Go ahead. What is it a</p> <p>24 daily report of?</p>
<p style="text-align: right;">Page 291</p> <p>1 previously pulled up. It's document</p> <p>2 Number 140. Look at 61193. It says,</p> <p>3 "What is a control drug IRR?"</p> <p>4 Do you see that?</p> <p>5 It says, "Purpose of</p> <p>6 inventory report, the IRR."</p> <p>7 Do you see that?</p> <p>8 A. I'm just getting to it now.</p> <p>9 I do see that.</p> <p>10 Q. "Assist in detection of</p> <p>11 potential suspicious orders."</p> <p>12 Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And is that to help</p> <p>15 prevent diversion?</p> <p>16 A. That's what's stated here in</p> <p>17 the document, yes.</p> <p>18 Q. Okay. Let's go to the next</p> <p>19 numbered document. Actually, go back to</p> <p>20 that document if you would, the previous</p> <p>21 document, Number 140. And go to Bates</p> <p>22 Number 61197. Do you see under</p> <p>23 responsibilities, what's listed there?</p> <p>24 Mr. Devlin, do you see that?</p>	<p style="text-align: right;">Page 293</p> <p>1 MS. MILLER: Objection.</p> <p>2 Asked and answered.</p> <p>3 THE WITNESS: Orders outside</p> <p>4 the bounds of the algorithm that</p> <p>5 was established.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. Okay. And how many of these</p> <p>8 IRRs were being generated daily amongst</p> <p>9 all the thousands of stores that were</p> <p>10 making orders of controlled substances to</p> <p>11 distribution centers owned by CVS?</p> <p>12 MS. MILLER: Objection.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Tell me.</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. You don't know?</p> <p>19 A. No.</p> <p>20 Q. Was it over 100?</p> <p>21 MS. MILLER: How many IRR</p> <p>22 reports?</p> <p>23 BY MR. BAKER:</p> <p>24 Q. How many IRR reports on</p>

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<p>1 average would be generated daily?</p> <p>2 A. I have no idea.</p> <p>3 Q. Was it over 200?</p> <p>4 A. I have no idea.</p> <p>5 Q. Was it over 300?</p> <p>6 A. I have no idea.</p> <p>7 Q. Was it over a thousand?</p> <p>8 MS. MILLER: Objection to</p> <p>9 this whole line.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Go ahead.</p> <p>12 A. I have no idea.</p> <p>13 Q. You have no idea how many</p> <p>14 IRRs were being generated daily, did you?</p> <p>15 You have no idea, did you?</p> <p>16 MS. MILLER: Are you asking</p> <p>17 how many reports?</p> <p>18 BY MR. BAKER:</p> <p>19 Q. How many item review reports</p> <p>20 were generated daily?</p> <p>21 A. Oh, there would be an item</p> <p>22 review report generated for each</p> <p>23 distribution center.</p> <p>24 Q. Okay. So how many reports</p>	<p>1 place. And on all the evidence</p> <p>2 that I had, the process was in</p> <p>3 place.</p> <p>4 BY MR. BAKER:</p> <p>5 Q. Did you monitor the process</p> <p>6 to make sure that it was doing what it</p> <p>7 was supposed to be doing? Did you? Or</p> <p>8 did you just delegate that?</p> <p>9 A. I mean, there certainly was</p> <p>10 delegation that took place.</p> <p>11 Q. Okay. Part of that was that</p> <p>12 the DC Rx, the DC pharmacist was supposed</p> <p>13 to review the report, the IRR daily, and</p> <p>14 determine whether variances were within</p> <p>15 acceptable ranges, correct?</p> <p>16 A. No.</p> <p>17 Q. That's what it says here on</p> <p>18 the responsibilities.</p> <p>19 A. It's DC pharmacy. It's not</p> <p>20 pharmacist.</p> <p>21 Q. DC pharmacy. The DC</p> <p>22 pharmacy. So who is the DC pharmacy? Is</p> <p>23 that a person? Is that a department?</p> <p>24 Who is that?</p>
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<p>1 were there? How many orders were on</p> <p>2 those reports?</p> <p>3 A. That, I do not know.</p> <p>4 Q. How many orders were flagged</p> <p>5 on those reports?</p> <p>6 A. That, I do not know.</p> <p>7 Q. What was the average number</p> <p>8 of orders that were flagged on those</p> <p>9 reports at any time during the period</p> <p>10 that you were there?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I just -- I</p> <p>13 don't know.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. What were the average number</p> <p>16 of investigations that took place</p> <p>17 relative to the flagged orders under</p> <p>18 those IRRs?</p> <p>19 A. I guess I -- I don't recall.</p> <p>20 Q. Was that not part of your</p> <p>21 job to know that information?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: My job to</p> <p>24 ensure that we had a process in</p>	<p>1 A. It would be referencing a</p> <p>2 department.</p> <p>3 Q. Okay. So the department was</p> <p>4 to review the IRR daily and determine</p> <p>5 whether variances were within acceptable</p> <p>6 ranges, correct?</p> <p>7 A. That's what's stated on this</p> <p>8 document. Again, I'm not sure as far as</p> <p>9 timelines go.</p> <p>10 Q. And who within the</p> <p>11 department was -- was that, that was</p> <p>12 supposed to review the daily IRRs?</p> <p>13 A. It would depend on which</p> <p>14 pharmacy distribution center we were</p> <p>15 talking about. There were some pharmacy</p> <p>16 distribution centers that would have a</p> <p>17 pharmacy manager. Some would have a</p> <p>18 pharmacy supervisor.</p> <p>19 Q. Look at the bottom bullet</p> <p>20 here. It says, "If there is no</p> <p>21 suspicious order, then attach</p> <p>22 documentation to IRR report and file."</p> <p>23 Do you see that?</p> <p>24 A. I do see that.</p>

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1 Q. Okay. What documentation
2 should be attached to the IRR report and
3 filed?
4 A. I can't recall a
5 documentation. I believe we did have the
6 IRR reports signed off on, just to show
7 that they were reviewed.
8 Q. Okay. Let's go back up. It
9 says, "DC Rx files information with DC
10 copy of IRR."
11 Do you see that?
12 A. I do see that.
13 Q. All right. And then the
14 next bullet, determination of suspicious
15 order. "Director of logistics loss
16 prevention" -- that's you, right?
17 A. Yes.
18 Q. Okay.
19 -- "notifies DEA and
20 conducts investigation. No further
21 shipments of the products to the store
22 until the matter is resolved."
23 Do you see that?
24 A. I do see that.

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1 Q. Okay. You never did that
2 though? You never contacted the DEA to
3 do that; is that correct?
4 MS. MILLER: Objection.
5 MR. BAKER: She objected.
6 BY MR. BAKER:
7 Q. Did you ever contact the DEA
8 at all in that context?
9 A. I did not.
10 Q. Okay. The next says, "No
11 suspicious order. If there's no
12 suspicious order, then attach
13 documentation to IRR report and file."
14 Do you see that?
15 A. Yes.
16 Q. Okay. Is the documentation
17 that's referred to there, is that the
18 investigation?
19 A. That's not how I interpret
20 that.
21 Q. How do you interpret that?
22 A. I look at no suspicious
23 order that the IRR report would be filed.
24 Q. I'm sorry?

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1 A. No suspicious --
2 Q. Attached documentation.
3 What -- what documentation?
4 A. Perhaps it would be phone
5 calls that were made. Contact with field
6 loss prevention. Contact with the
7 pharmacy. Those are a couple of examples
8 I can think of.
9 Q. Okay. That's the
10 documentation I'm asking for.
11 A. I'm sure -- I'm sure there
12 are -- I'm sure there was probably more.
13 That's all I can recall.
14 Q. Okay. All right. But that
15 was -- that was a written policy within
16 your department that that's how it's
17 supposed to be done. This is it, attach
18 documentation to IRR report and file,
19 right?
20 MS. MILLER: Objection.
21 THE WITNESS: Again, not
22 sure of time frames or --
23 BY MR. BAKER:
24 Q. Well, let's go back, let's

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1 go back. Go back to the beginning here.
2 A. Again, I'm not, you know,
3 once this --
4 Q. Go back to Page 1 of this
5 document right here. It should be Bates
6 Number 61191. August 27, 2010. Do you
7 see it?
8 I want you to be sure of
9 this time frame.
10 A. I see that.
11 Q. Do you see that?
12 A. Yes.
13 Q. All right. Now let's go
14 back to where we were within this
15 document, which is no suspicious order,
16 attach documentation to IRR report and
17 file. Do you see that?
18 A. Yes.
19 Q. Okay. So we are talking --
20 are we talking about something that was a
21 policy in writing, August 27, 2010, that
22 we're reading right now as it relates to
23 how to handle investigation of IRRs?
24 MS. MILLER: Objection.

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1 THE WITNESS: I can't -- I
2 can't, based on this document, say
3 that this was a policy.
4 BY MR. BAKER:
5 Q. Well, then how did it make
6 its way into the document, how did that
7 bullet point make its way into the
8 document?
9 MS. MILLER: Objection.
10 BY MR. BAKER:
11 Q. How did it make its way into
12 there?
13 MS. MILLER: Objection.
14 THE WITNESS: I don't know.
15 BY MR. BAKER:
16 Q. This is part of that DEA
17 speaking points we talked about earlier,
18 isn't it?
19 MS. MILLER: Objection.
20 BY MR. BAKER:
21 Q. Isn't that what this is?
22 A. I'm not sure.
23 Q. You're not sure? Do you
24 remember that I showed you the August 25,

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1 2010 e-mail to Ms. Propatier, do you
2 remember that, on Exhibit Number 97, do
3 you remember that?
4 A. Let me take some time to
5 take a look at it.
6 Q. Okay. It says, "Could you
7 please post? We added the suspicious
8 order monitoring."
9 Do you remember that?
10 A. I see that, yes.
11 Q. Do you remember the e-mail I
12 showed you about DEA speaking points,
13 make sure we use this when the DEA asks,
14 that it's not to be used as a prop, but
15 to be used as a tool, do you remember
16 that?
17 MS. MILLER: Objection.
18 Why don't you show him the
19 e-mail?
20 BY MR. BAKER:
21 Q. Do you remember that? If
22 you don't remember it, just say you don't
23 remember it.
24 A. I'd like to refresh my

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1 memory.
2 Q. Okay. Let's take a break
3 while we find that.
4 THE VIDEOGRAPHER: Off
5 video, 2:07.
6 (Short break.)
7 THE VIDEOGRAPHER: We are
8 going back on record. Beginning
9 of Media File 8. The time is
10 2:21.
11 BY MR. BAKER:
12 Q. Pull Exhibit 81, please.
13 You have in front of you --
14 MS. MILLER: Could you give
15 us one minute?
16 MR. BAKER: Sure.
17 MS. MILLER: Okay.
18 BY MR. BAKER:
19 Q. You have in front of you
20 Exhibit 81. You've seen this exhibit
21 earlier today, correct?
22 A. Yes.
23 Q. Okay. This talks about an
24 e-mail between John Mortelliti and a

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1 whole bunch of people on that e-mail
2 list. It talks about importance high.
3 "Team, these are the final approved
4 DEA" -- "speaking points for the DEA
5 agents" -- do you see that?
6 A. I do.
7 Q. Okay.
8 -- "if they come to one of
9 our facilities and question suspicious
10 monitoring. It is okay to share this
11 document. Please be sure your team
12 understands it before presenting it so it
13 doesn't look like a prop instead of a
14 tool."
15 Do you see that?
16 A. I do.
17 Q. "I included Marvin because
18 DEA will be there today as well."
19 Do you see that?
20 A. Yes.
21 Q. Okay. Now, look at the next
22 page on this document. Do you see this
23 one, August 27, 2010?
24 Do you see that?

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<p>1 A. Yes.</p> <p>2 Q. This is the same group of</p> <p>3 documents that we've just been</p> <p>4 questioning you about, correct?</p> <p>5 A. It appears so, yes.</p> <p>6 Q. All right. This is the DEA</p> <p>7 speaking points. Just go back down</p> <p>8 inside there. Keep paging down. All</p> <p>9 right. CVS suspicious order monitoring.</p> <p>10 Do you see that? Keep going</p> <p>11 down. One more page.</p> <p>12 "The purpose of the IRR</p> <p>13 report." Go up one page.</p> <p>14 Do you see that? This is</p> <p>15 the same document that I've been going</p> <p>16 over with you before we just took a</p> <p>17 break, correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. So when I say</p> <p>20 this is the DEA speaking points, do you</p> <p>21 understand this is what I'm talking</p> <p>22 about?</p> <p>23 A. I see the correlation</p> <p>24 between this document and the document</p>	<p>1 Q. Okay. Let's go back up to</p> <p>2 that.</p> <p>3 Now, you understand that</p> <p>4 this is what y'all were showing to DEA;</p> <p>5 is that right?</p> <p>6 MS. MILLER: Objection.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Was this what was put in</p> <p>9 place to show the DEA according to that</p> <p>10 e-mail?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I don't know</p> <p>13 if this was actually shown to the</p> <p>14 DEA.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Wasn't that the purpose of</p> <p>17 it, according to the e-mail, was to show</p> <p>18 it to the DEA?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: I was</p> <p>21 interpreting it more as speaking</p> <p>22 points.</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Okay. Speaking points to</p>
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<p>1 that you've been talking about, yes.</p> <p>2 Q. Okay. Now go down to where</p> <p>3 it talks about -- keep going down.</p> <p>4 MS. MILLER: And which --</p> <p>5 are you in 81 or 140?</p> <p>6 MR. BAKER: Yeah. I'm still</p> <p>7 in 81. Still in 81. Keep going.</p> <p>8 Keep going. Keep going.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. The responsibilities. Do</p> <p>11 you see that?</p> <p>12 A. What Bates number is that?</p> <p>13 Q. Well, it doesn't have a</p> <p>14 Bates number, because this is an</p> <p>15 attachment to the document.</p> <p>16 MS. MILLER: It has Bates.</p> <p>17 THE WITNESS: 5306?</p> <p>18 BY MR. BAKER:</p> <p>19 Q. The one that talks about</p> <p>20 responsibilities. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Yes. 53 -- 075306. Do you</p> <p>23 see that?</p> <p>24 A. Yes.</p>	<p>1 the DEA because they were going to be at</p> <p>2 a facility. You're sending it to Marvin,</p> <p>3 whoever that is, because the DEA is going</p> <p>4 to be there today, correct?</p> <p>5 A. That's what the e-mail says,</p> <p>6 yes.</p> <p>7 Q. Okay. So you understand</p> <p>8 what I'm talking about when I say DEA</p> <p>9 speaking points from now on, correct?</p> <p>10 This is what I'm talking about.</p> <p>11 A. Yes.</p> <p>12 Q. Can you remember that if I</p> <p>13 ask you to recall that again in this</p> <p>14 deposition, that the DEA speaking points</p> <p>15 are these slides right here?</p> <p>16 A. Which is Exhibit 140?</p> <p>17 Q. It's Exhibit 81.</p> <p>18 A. Okay. I'll maintain.</p> <p>19 Q. You'll remember that, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Thank you. Let's go</p> <p>22 back to 211, if you would. Do you</p> <p>23 remember the series of e-mails that I was</p> <p>24 talking about --</p>

<p style="text-align: right;">Page 310</p> <p>1 MS. MILLER: Bill, if you 2 can give him a moment to put that 3 in front of him. 4 BY MR. BAKER: 5 Q. Number 211. 6 MS. MILLER: How recently 7 was that? 8 MR. BAKER: I don't know. 9 THE WITNESS: I don't recall 10 a 211. Oh, here it is. 11 BY MR. BAKER: 12 Q. Do you see it? 13 A. It didn't have a sticker on 14 it. 15 Q. Now, at the bottom of that 16 page, the front page there, it says, 17 "Ellen, would it be possible to do this 18 Friday?" 19 And this is regarding 20 adjustment to the CVS SOM. 21 "Also with expenses being 22 tight right now, would we be able to turn 23 off the control drug IRR for all the DCs 24 except Lumberton?"</p>	<p style="text-align: right;">Page 312</p> <p>1 monitoring? 2 A. I -- I've read an IRR. I 3 did not perform the IRR full review 4 process. 5 Q. Okay. So when you were at 6 CVS in 2010, did you know how to analyze 7 an IRR to determine whether or not it met 8 the -- the standards of suspicious order 9 monitoring set forth by CVS? 10 A. I had a conceptual 11 understanding of it, but I did delegate 12 those responsibilities as far as the full 13 analysis goes. 14 Q. Did you ever do any due 15 diligence type of investigation of 16 anything relative to an IRR itself? 17 A. No. Any information would 18 have been presented to me. 19 Q. Okay. 20 A. But I can't -- 21 Q. The answer is no -- 22 A. I can't recall a specific 23 instance, no. 24 MR. BAKER: Okay. Next.</p>
<p style="text-align: right;">Page 311</p> <p>1 Do you see that? 2 A. I do. 3 Q. Okay. And then above that, 4 you see just above that, it says, "Could 5 you turn off the printout from BIP006A 6 except for John Mortelliti and Frank 7 Devlin?" 8 Do you see that? 9 A. I do. 10 Q. Okay. What is that 11 printout? 12 A. I don't recall what that -- 13 what that number stands for. 14 Q. Would those be the IRRs? 15 A. I'm not sure. 16 Q. As you sit here today, is it 17 your testimony that you never read an 18 IRR? 19 MS. MILLER: Objection. 20 THE WITNESS: I didn't say 21 that. 22 BY MR. BAKER: 23 Q. Did you ever review an IRR 24 in the context of suspicious order</p>	<p style="text-align: right;">Page 313</p> <p>1 That's the same thing. Next. 2 BY MR. BAKER: 3 Q. Were there any problems that 4 you encountered with the suspicious order 5 monitoring software program that was 6 purchased from the Buzzeo related 7 company? 8 MS. MILLER: Objection. 9 BY MR. BAKER: 10 Q. What's the name of the 11 company that CVS purchased the software 12 program from that was used for suspicious 13 order monitoring? 14 MS. MILLER: Objection. 15 THE WITNESS: Cegedim 16 Dendrite. 17 BY MR. BAKER: 18 Q. Okay. Is that CCS? 19 A. I don't recall the 20 abbreviation. 21 Q. Okay. Cegedim Dendrite, is 22 that the name of it? 23 A. I believe so. I think his 24 company actually had a couple different</p>

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1 names, so I'm not sure.
2 Q. Okay. But that -- that was
3 the company that Mr. Buzzeo was
4 affiliated with?
5 A. Yes.
6 Q. Okay. Did you know him
7 personally? Did you meet him personally?
8 A. I did meet Mr. Buzzeo, yes.
9 Q. Okay. Was there ever a
10 problem with the system as it relates to
11 not reporting by active ingredient,
12 talking about the controlled substances,
13 not reporting the controlled substances
14 by active ingredient?
15 MS. MILLER: Objection.
16 BY MR. BAKER:
17 Q. Was there?
18 MS. MILLER: Objection.
19 BY MR. BAKER:
20 Q. Was there ever a problem in
21 that respect?
22 MS. MILLER: Objection.
23 THE WITNESS: I can recall a
24 change from item to active

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1 ingredient.
2 BY MR. BAKER:
3 Q. I'm sorry, what now?
4 A. I can recall a change from
5 item to active ingredient.
6 Q. Okay. Before there was a
7 change from item to active ingredient,
8 did that cause a problem with respect to
9 the implementation of that system?
10 MS. MILLER: Objection.
11 THE WITNESS: What's the
12 definition of a problem? I'm not
13 sure.
14 BY MR. BAKER:
15 Q. Okay. Let's talk about it.
16 (Document marked for
17 identification as Exhibit
18 CVS-Devlin-P-209.)
19 BY MR. BAKER:
20 Q. I'm going to show you
21 Exhibit Number 209. This is an e-mail
22 from Mr. Mortelliti to you, Frank Devlin,
23 10/6 of 2010.
24 Do you see that?

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1 A. I do see that.
2 Q. All right. It says, "Here
3 is a bullet recap of the IRR issue I
4 communicated to you. September there
5 were two control drugs containing hydro
6 that appeared to have lost two to
7 four months of history."
8 Do you see that?
9 A. I do see that.
10 Q. What is the significance of
11 that, that it lost history?
12 MS. MILLER: Objection.
13 THE WITNESS: I know with
14 the algorithm -- and again, I
15 don't recall all the parameters of
16 the algorithm. There are multiple
17 components on the algorithm.
18 History was a part of it.
19 BY MR. BAKER:
20 Q. Okay. In order to be able
21 to compare the current purchase or the
22 current order against prior orders; is
23 that correct?
24 MS. MILLER: Objection.

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1 BY MR. BAKER:
2 Q. Is that right?
3 A. I believe you would still be
4 able to make a comparison of prior
5 orders.
6 Q. Okay. It says, "Ellen
7 determined that the historical data was
8 lost due to manufacturer change in the
9 wording."
10 Do you see that?
11 A. I do see that.
12 Q. Okay. And then it says,
13 "October, all but one item on the network
14 control drug IRR has lost three to
15 four months of historical data. There
16 are only six months of data for control
17 drugs."
18 Do you see that?
19 A. I do see that.
20 Q. Then it says, "10/6/10, sent
21 a request from to Gary M. to have the IRR
22 formula changed to active ingredient
23 instead of item."
24 Do you see that?

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1 A. Yes.
2 Q. All right. Was there a
3 problem with using the system that was in
4 place 10/26/10 due to it not reporting
5 the item by active ingredient?
6 MS. MILLER: Objection.
7 THE WITNESS: I don't -- I
8 don't recall this particular
9 issue. I -- I do recall a change
10 from item to active ingredient.
11 BY MR. BAKER:
12 Q. Okay.
13 A. And I know part of that was
14 looked at. It was just an evolution in
15 the process --
16 Q. Okay.
17 A. -- as far as being able to
18 identify someone if they were spreading
19 orders out over different manufacturers.
20 If they started ordering a little bit
21 from each manufacturer, that by going to
22 active ingredient, that would -- that
23 would provide an enhancement in the
24 information.

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1 BY MR. BAKER:
2 Q. Okay.
3 A. That -- that's how I
4 remember this as an issue.
5 Q. Tell me about spreading
6 orders, what that means.
7 A. Again, the change, so if you
8 had a controlled substance and you had
9 four or five different manufacturers for
10 the same controlled substance. So if
11 you'd order, let's say, and I'm just
12 making these numbers up, so if you order
13 five, five, five, five from the four
14 different manufacturers, you know, that
15 could look like even ordering. So if you
16 went to active ingredient, that would
17 take out that manufacturer, I guess,
18 component of it. So you would just be
19 looking at the overall ingredient.
20 Q. Okay. Spreading orders,
21 what does that mean in the context of a
22 pharmacy and a threshold in terms of how
23 much they purchase per month of say
24 hydrocodone combination product, what

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1 does that mean?
2 A. It wouldn't -- it wouldn't
3 necessarily change.
4 MS. MILLER: Objection.
5 Excuse me.
6 THE WITNESS: I'm sorry?
7 MS. MILLER: Go ahead.
8 BY MR. BAKER:
9 Q. What does it mean?
10 A. It wouldn't -- it
11 wouldn't -- it wouldn't change what the
12 pharmacy was purchasing. It would just
13 give some better visibility as far as the
14 active ingredients go.
15 Q. Okay. Visibility meaning
16 visibility under the suspicious order
17 monitoring system?
18 A. Yes.
19 Q. Okay. And if they spread
20 orders, how does that prevent visibility
21 under the suspicious order monitoring
22 system?
23 MS. MILLER: Objection.
24 THE WITNESS: It could -- it

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1 could still flag potentially, I
2 believe, because there are
3 multiple components of the
4 algorithm. This was really just a
5 fine-tuning of it.
6 BY MR. BAKER:
7 Q. Okay. But if they were
8 spreading orders, does that flounder the
9 radar at all insofar as suspicious order
10 monitoring?
11 MS. MILLER: Objection.
12 THE WITNESS: I don't know.
13 (Document marked for
14 identification as Exhibit
15 CVS-Devlin-P-55.)
16 BY MR. BAKER:
17 Q. Okay. Let me show you
18 Exhibit Number 55. This is a business
19 idea description, and it's requested on
20 behalf of John Mortelliti. And it's --
21 under the summary description and
22 objectives, it says, "DEA expects CVS to
23 prevent suspicious orders from being
24 filled out of our DCs. The current IRR

<p style="text-align: right;">Page 322</p> <p>1 does not provide the proper information 2 to meet the DEA's needs. We need control 3 drugs to be monitored by active 4 ingredient. Currently the control drugs 5 are monitored by item. The IRR loses all 6 order history when the info on the item 7 changes, causing CVS to be noncompliant 8 with DEA expectations." 9 Is that what this document 10 says? 11 A. That's what the document 12 says. 13 Q. Okay. And that relates to 14 active ingredient; is that correct? 15 MS. MILLER: Objection. 16 THE WITNESS: I see the term 17 "active ingredient" on the 18 document, yes. 19 BY MR. BAKER: 20 Q. Okay. And that's consistent 21 with what we've been discussing in the 22 prior e-mail, correct? 23 A. I don't know if this 24 document, per se, is related to the prior</p>	<p style="text-align: right;">Page 324</p> <p>1 tell you, but these are how the 2 documents are presented to us. 3 They don't tell us -- 4 MS. MILLER: Well, this is a 5 page from a larger document. Do 6 you have the document? 7 MR. BAKER: I don't have the 8 larger document. I don't. I wish 9 I did, but -- 10 MS. MILLER: It doesn't -- 11 MR. BAKER: We'll move 12 forward. And if we want to 13 discuss it out of the deposition, 14 we can. I'd be happy to -- 15 MS. MILLER: It's just do 16 you have a -- so you have no other 17 context related to this 18 document -- 19 MR. BAKER: At this point I 20 don't -- 21 MS. MILLER: -- to provide 22 the witness? 23 MR. BAKER: -- as we sit 24 here today. I wish I did, but</p>
<p style="text-align: right;">Page 323</p> <p>1 e-mail. 2 Q. Okay. Well, let's go to the 3 next document. 4 (Document marked for 5 identification as Exhibit 6 CVS-Devlin-P-164.) 7 BY MR. BAKER: 8 Q. It's Exhibit Number 164. 9 This is within a native document, and 10 your attorney knows what that means. 11 MS. MILLER: What -- Bill, 12 is there any context of where this 13 came from? Was it attached as an 14 attachment, was it a document -- 15 MR. BAKER: There was a -- 16 it was a native, and we opened it, 17 this is exactly what it looked 18 like. But it's dated 5/3/11, and 19 it says Frank Devlin -- 20 MS. MILLER: Well, I see 21 there's a date of 5/3/11, but 22 there's no -- absolutely no 23 context of -- 24 MR. BAKER: I wish I could</p>	<p style="text-align: right;">Page 325</p> <p>1 this is all I have. This is the 2 problem with using natives. 3 BY MR. BAKER: 4 Q. So here we go. 5 MS. MILLER: You don't even 6 have a title on the document of 7 when it was generated. 8 MR. BAKER: I understand. 9 It's provided by CVS. If you have 10 a doubt on that, I'll go back and 11 try to show you where we got it. 12 MS. MILLER: No, I 13 understand that. It's just 14 clearly part of a bigger 15 document -- 16 MR. BAKER: Sure. 17 MS. MILLER: -- there's 18 actually no context given the page 19 you're showing the witness. 20 MR. BAKER: I understand. 21 All right. 22 BY MR. BAKER: 23 Q. So this says 5/3/11, Devlin, 24 F. Do you see that?</p>

<p style="text-align: right;">Page 326</p> <p>1 A. Right. I do.</p> <p>2 Q. Okay. This has that same</p> <p>3 sort of thing on it. It says, "DEA</p> <p>4 expects CVS to prevent suspicious orders</p> <p>5 from being filled out of our DCs. The</p> <p>6 current IRR does not provide the proper</p> <p>7 information to meet the DEA's needs. We</p> <p>8 need control drugs to be monitored by</p> <p>9 active ingredient. Currently the control</p> <p>10 drugs are monitored by item. The IRR</p> <p>11 loses all order history when the info on</p> <p>12 the item changes, causing CVS to be</p> <p>13 noncompliant with DEA expectations."</p> <p>14 Is that what the document</p> <p>15 says?</p> <p>16 MS. MILLER: I object to the</p> <p>17 use of the document for the</p> <p>18 reasons I stated.</p> <p>19 MR. BAKER: Understood.</p> <p>20 MS. MILLER: You may go</p> <p>21 ahead and answer.</p> <p>22 MR. BAKER: Understood.</p> <p>23 THE WITNESS: That is what</p> <p>24 the document states.</p>	<p style="text-align: right;">Page 328</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. All right. Let's talk about</p> <p>4 that. This is October 12, 2010. This is</p> <p>5 John Mortelliti. At that point is he in</p> <p>6 Lumberton to your knowledge?</p> <p>7 A. Yes, I believe his -- yes,</p> <p>8 his office --</p> <p>9 Q. Okay.</p> <p>10 A. -- was in Lumberton.</p> <p>11 Q. Okay. And this e-mail says,</p> <p>12 "I" -- I presume that means John</p> <p>13 Mortelliti -- "am handling the control</p> <p>14 drug IRR for the time being."</p> <p>15 Is that what it says?</p> <p>16 A. That's what it says, yes.</p> <p>17 Q. Okay. And it says, "You may</p> <p>18 want to forward it to Dean." Then it</p> <p>19 says, "Dean, there is a rewrite we are</p> <p>20 trying to get approved for the control</p> <p>21 drug IRR. The current report shows</p> <p>22 control drugs by item instead of active</p> <p>23 ingredient, such as PSE. We thought this</p> <p>24 would be a great idea at the time, but</p>
<p style="text-align: right;">Page 327</p> <p>1 BY MR. BAKER:</p> <p>2 Q. Did you write that in there?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: I do not</p> <p>5 recall writing that. And in</p> <p>6 looking at my -- that's not the</p> <p>7 type of language I would use.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Okay.</p> <p>10 (Document marked for</p> <p>11 identification as Exhibit</p> <p>12 CVS-Devlin-P-82.)</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Let's pull exhibit number</p> <p>15 82. This is an e-mail dated 10/12/2010</p> <p>16 from John have Mortelliti to Todd Janson.</p> <p>17 Who is Todd Janson?</p> <p>18 A. I believe he was a loss</p> <p>19 prevention manager in Vero Beach,</p> <p>20 Florida.</p> <p>21 Q. Okay. Let's read this. It</p> <p>22 says, "Todd, I sent you an e-mail about</p> <p>23 two weeks ago explaining why I'm handling</p> <p>24 the control drug IRR for the time being."</p>	<p style="text-align: right;">Page 329</p> <p>1 what we found was that the system cannot</p> <p>2 match historical data to an item if the</p> <p>3 manufacturer changes the name of the</p> <p>4 item. Todd can forward you the e-mail.</p> <p>5 Example, hydro five milligrams can be</p> <p>6 changed to hydro, milligram five. Same</p> <p>7 item, just a five in front of milligram.</p> <p>8 The system cannot match this item because</p> <p>9 of the change and, therefore, loses</p> <p>10 historical data. This is why you're</p> <p>11 seeing zero for historical ordering,</p> <p>12 usually in Lag 3 to 6."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Was this brought to</p> <p>16 your attention, this issue with respect</p> <p>17 to active ingredient and how it was being</p> <p>18 used and the issues that it was causing</p> <p>19 with relation to matching historical data</p> <p>20 to an item?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Was this brought to your</p> <p>24 attention?</p>

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1 MS. MILLER: Objection.
2 THE WITNESS: I just -- I
3 recall -- I recall the change of
4 the item to active ingredient.
5 But my recollection was based more
6 on the manufacturer issue. As far
7 as the loss, I just -- I don't
8 recall that.
9 BY MR. BAKER:
10 Q. Okay. If there's a loss of
11 historical data, how does that affect the
12 efficacy of the system?
13 MS. MILLER: Objection.
14 THE WITNESS: There would
15 still be other components. You
16 know, and again, I don't know the
17 details of the algorithm. It
18 wasn't just that one piece. So it
19 would still be -- the system would
20 still be up and running.
21 BY MR. BAKER:
22 Q. Do you know at what point in
23 time this issue was dealt with to where
24 there was a change from active

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1 ingredient -- I mean a change from item
2 description to active ingredient?
3 A. Yeah, I don't recall the
4 time frame.
5 Q. Was it ever changed?
6 A. I believe at one point it
7 was changed, yes.
8 Q. Was it ever changed before
9 you left?
10 A. Yeah, I believe it was.
11 Q. Do you know when in the
12 context of before you left it was ever
13 changed, if at all?
14 MS. MILLER: Objection.
15 THE WITNESS: I believe it
16 was changed. I just -- I can't
17 recall the exact time it was
18 changed.
19 MR. BAKER: Pull Exhibit 92.
20 (Document marked for
21 identification as Exhibit
22 CVS-Devlin-P-92.)
23 BY MR. BAKER:
24 Q. Have you ever heard of the

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1 concept of --
2 MS. MILLER: Oh. Are you
3 asking questions --
4 MR. BAKER: Yes.
5 MS. MILLER: -- outside the
6 document?
7 MR. BAKER: Yes, yes. Let's
8 move on to the next one. I'll
9 give you a document in just a
10 second.
11 BY MR. BAKER:
12 Q. Have you ever heard of the
13 concept of same store, same month orders?
14 A. Same store, same --
15 Q. Same month orders?
16 A. No, I don't recall that.
17 Q. Okay. Let me ask you
18 hypothetically to assume this is what it
19 means.
20 If you have a pharmacy that
21 orders in Week 1, and orders, say, 5,000
22 hydrocodone combination products. And
23 then Week 2 orders the same 5,000
24 hydrocodone combination products, then

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1 Week 3 orders that same 5,000 hydrocodone
2 combination products, and then Week 4
3 orders those same 5,000 hydrocodone
4 combination products.
5 That's same store, same
6 month, making the order of the same
7 product. Do you understand what I'm
8 talking about if, hypothetically, that's
9 what I'm trying to present to you? Do
10 you understand that?
11 MS. MILLER: Objection.
12 BY MR. BAKER:
13 Q. Do you understand that?
14 MS. MILLER: Objection.
15 THE WITNESS: I understand
16 you saying a store four weeks in a
17 row is ordering 5,000.
18 BY MR. BAKER:
19 Q. That's an example of same
20 store, same month ordering.
21 A. Okay.
22 Q. So now do you understand
23 what I'm saying when I say same store,
24 same month order?

<p style="text-align: right;">Page 334</p> <p>1 A. Yes. I don't recall that 2 term before. 3 Q. Okay. That's fine. 4 A. I'll follow along with -- 5 Q. I'm just trying to make sure 6 we are on the same wavelength, that we're 7 talking the same language, so when I say 8 same store, same month, there's not this 9 disconnect, that you actually understand 10 what I'm talking about. Do you 11 understand what I'm talking about now 12 when I say same store, same month 13 ordering? 14 A. Consistently the same amount 15 being ordered -- 16 Q. It doesn't have to be the 17 same amount. Just simply the same store, 18 making an order the same month, in other 19 words more than one order in a month? 20 MS. MILLER: Objection. 21 THE WITNESS: So I thought 22 the example you were giving you 23 said Week 1, 5,000, Week 2, 5,000. 24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 336</p> <p>1 Q. Well, let's get away from 2 the example. 3 A. That's what you're giving 4 me. 5 Q. But every time I talk to 6 you, you act like you don't know what the 7 heck I'm talking about. So I'm trying to 8 be plain and simple with you. 9 A. All right. Okay. Sir, I'm 10 carefully listening to your question. 11 Q. I know you are. 12 MS. MILLER: Let him -- give 13 him a chance to answer it. Ask 14 the question. 15 BY MR. BAKER: 16 Q. But if the same store orders 17 in the same month, that's called same 18 store, same month ordering in the context 19 of my questioning. 20 A. Irregardless of quantity? 21 Q. Irregardless -- irrespective 22 of quantity. 23 A. Okay. 24 Q. Okay. I want you to look at</p>
<p style="text-align: right;">Page 335</p> <p>1 Q. No, sir. It doesn't have to 2 be the exact same amount. If the same 3 store makes an order in the same month, 4 in other words more than one order per 5 month. 6 Do you understand what I'm 7 talking about? 8 MS. MILLER: Objection. 9 BY MR. BAKER: 10 Q. You're acting dumbfounded 11 like you don't know what I'm talking 12 about. The same store makes an order 13 sequentially during the weeks of the 14 months. That's the same store making an 15 order in the same month. Is that not -- 16 MS. MILLER: You're just 17 saying the store is making an 18 order each week in the month? 19 MR. BAKER: Correct. 20 BY MR. BAKER: 21 Q. Do you understand that? 22 A. I understand that. The 23 example you gave me though, you were 24 saying the same quantity.</p>	<p style="text-align: right;">Page 337</p> <p>1 Document Number 92, and go to 83065. 2 Okay. Now, this is an attachment to an 3 e-mail dated 11/29/2012; is that correct? 4 MS. MILLER: Bill, I'm 5 sorry. The document that I have 6 is 83855 as the beginning Bates. 7 MR. BAKER: Correct. 8 MS. MILLER: Oh, I thought 9 you said 83065. 10 MR. BAKER: It's a packet. 11 MS. MILLER: Because I 12 don't -- 13 MR. BAKER: Give me the one 14 that attaches that. 15 BY MR. BAKER: 16 Q. Okay. I'm looking at 83064. 17 Do you see that. Do you have that? 18 MS. MILLER: I don't have 19 that. When you referred to 20 packet, I think I just got one 21 e-mail. 22 MR. BAKER: I'm sorry. I 23 apologize. 24 MS. MILLER: No, I want to</p>

<p style="text-align: right;">Page 338</p> <p>1 make sure we're talking about the 2 same thing. 3 MR. BAKER: Do you have the 4 e-mail? 5 MS. MILLER: Do you have -- 6 so it's dated November 29, 2012. 7 THE WITNESS: I see that. 8 MS. MILLER: Is that the 9 start? 10 MR. BAKER: I'm looking at 11 83064, 83065, and 83066. Do y'all 12 have those? 13 MS. MILLER: We have that. 14 And so is that Exhibit 92? 15 MR. BAKER: That's what I'm 16 asking him about. That's what I'm 17 asking him about. 18 MS. MILLER: Is this -- 19 MR. BAKER: It's probably a 20 couple -- 21 MS. MILLER: The exhibit -- 22 I want for the record -- I just to 23 make sure. 24 MR. BAKER: Have both be the</p>	<p style="text-align: right;">Page 340</p> <p>1 the e-mail. To the top. Do you see 2 this? 3 A. Yes. 4 Q. Okay. This says, 5 "Opportunities document." 6 Do you see that? 7 A. Yes. 8 Q. "SOM plan." 9 Do you see that? 10 A. Yes. 11 Q. Okay. This is 11/29/12. 12 Now, go to the bottom of the document, 13 and look at the Bates number. Do you see 14 the Bates number here, 83064? Do you see 15 that? 16 A. Yes. 17 Q. Okay. Go to the next page. 18 At the top it says, "Opportunities, 19 current SOM process." 20 Do you see that? Do you see 21 it? 22 A. Yes, sir. 23 Q. Okay. Look at the bottom. 24 It's 83065.</p>
<p style="text-align: right;">Page 339</p> <p>1 exhibit, composite. 2 MS. MILLER: Okay. 3 Composite exhibit. So the first 4 e-mail is the November 29, 2012. 5 MR. BAKER: Correct. 6 Absolutely. 7 MS. MILLER: I got it now. 8 BY MR. BAKER: 9 Q. Okay. All right. Look at 10 the e-mail now dated 11/29/12. Do you 11 see that at the bottom? Do you see it? 12 A. Yes. 13 Q. Okay. Do you see where it 14 says Thursday, November 29, 2012? Do you 15 see that? 16 A. Yes. 17 Q. Okay. It says, "Team, 18 here's the project plan and process flow 19 that Craig and I will review with you at 20 2:00 p.m. eastern today. Thank you, 21 Tom." 22 Do you see that? 23 A. Yes. 24 Q. Okay. Now, go to the top of</p>	<p style="text-align: right;">Page 341</p> <p>1 Do you see that? 2 A. Yes. 3 Q. Okay. Now, go to the bottom 4 of the next document. It's 83066. 5 Do you see that? 6 A. Yes. 7 Q. These are the documents that 8 I'm asking you questions about right now. 9 Do you understand that? 10 A. Yes, sir. 11 Q. Okay. So if you go to the 12 second page, 83065. Do you see that? 13 Under "Opportunities, current SOM 14 process." 15 Do you see that? 16 A. Yes. 17 Q. It says, "If order is 18 cleared on first of month and cleared, 19 and store then orders again that month, 20 it won't be looked at." 21 Do you see that? 22 A. Yes. 23 Q. Okay. What does that mean? 24 A. I do not know. This</p>

<p style="text-align: right;">Page 342</p> <p>1 document was -- this document was 2 produced after I left the company. 3 Q. Okay. It says, "If system 4 flags it, we are required to look at it 5 and document why it was released. 6 Currently, we're simply releasing order 7 based on past due diligence on a 8 different order." 9 Do you see that? 10 A. I do. 11 Q. Okay. Now, what does that 12 mean? Do you know? 13 A. I do not know. 14 Q. Okay. Was this the same 15 system that was in place when you were 16 there or is this a different system or do 17 you know? 18 A. I would not know that. 19 Q. Okay. Do you know whether 20 or not there was a change in the system 21 between the time that you left in October 22 2012 and the time that this e-mail and 23 this SOM, "Opportunities, current SOM 24 process" memorandum was generated?</p>	<p style="text-align: right;">Page 344</p> <p>1 any of the orders of Schedule III 2 narcotics that were being made by CVS 3 pharmacies to outside vendors were being 4 monitored by those outside vendors, do 5 you know? 6 A. Is there an exhibit I'm 7 supposed to be looking at? 8 Q. Not right this second. I'm 9 just asking the question, do you know. 10 A. Can you repeat the question? 11 Q. If an outside vendor was 12 selling a narcotic, a Schedule III 13 narcotic to a CVS pharmacy while you were 14 employed at CVS, do you know whether or 15 not that outside vendor was monitoring 16 that order that was made by the CVS 17 pharmacy to its company? 18 MS. MILLER: Object -- 19 objection. 20 BY MR. BAKER: 21 Q. Do you know? 22 A. I believe I was told they 23 were, but it's not something I ever 24 looked into.</p>
<p style="text-align: right;">Page 343</p> <p>1 A. I would have no idea. 2 Q. Okay. Who took over your 3 position when you left? 4 A. It was -- I believe it was 5 an open position. And I believe they 6 hired someone from the outside. 7 Q. Okay. Who is Craig Schiavo? 8 A. I have no idea. 9 Q. You never met him? 10 A. Not that I recall. 11 Q. Who is Tom Bourque? 12 A. I have no idea. 13 Q. Did Aaron Burtner have 14 anything to do with the SOM process after 15 you left to your knowledge? 16 A. I believe he did, yes. 17 Q. Okay. 18 (Document marked for 19 identification as Exhibit 20 CVS-Devlin-P-53.) 21 BY MR. BAKER: 22 Q. Let's look at Exhibit 23 Number 53, please. 24 Do you know whether or not</p>	<p style="text-align: right;">Page 345</p> <p>1 Q. Okay. So the question is do 2 you know one way or the other. 3 A. I couldn't say. 4 Q. You could not say. Okay. 5 So was CVS monitoring the purchase by its 6 pharmacies of outside vendor products 7 that were Schedule III narcotics? 8 MS. MILLER: Objection. 9 THE WITNESS: Not as part of 10 my responsibility. 11 BY MR. BAKER: 12 Q. Okay. Let me ask you to 13 look at Document Number 53. Exhibit 53. 14 Now, this document is dated 15 10/8 of 2012. Do you see that? 16 A. I do. 17 Q. Okay. Were you still there 18 10/8 of 2012? 19 A. Yes. 20 Q. Okay. And when you were 21 there at 10/8 of 2012, what was your 22 position? 23 A. Director of logistics loss 24 prevention.</p>

<p style="text-align: right;">Page 346</p> <p>1 Q. And was the suspicious order 2 monitoring run under that department or 3 not?</p> <p>4 MS. MILLER: Objection. 5 BY MR. BAKER:</p> <p>6 Q. At that time? 7 A. Yes. 8 Q. Okay. I'd like to ask you 9 to look down on this memorandum, this, 10 this memorandum that is attached to -- 11 actually, if you look at the front page, 12 it's October 5, 2012, it says, from Pam 13 Hinkle to Frank Devlin, conference call 14 notes, 10/25/12. 15 Do you see that? 16 A. I do. 17 Q. Okay. So you were on a 18 conference call or was this being sent to 19 you from something Pam Hinkle had 20 attended on a conference call. Which one 21 is it? 22 A. I -- I don't recall being on 23 this conference call. 24 Q. But it appears this was sent</p>	<p style="text-align: right;">Page 348</p> <p>1 notice at this point in time. 2 Q. Okay. The second bullet 3 point there says, "AGI will develop an 4 algorithm to fix issues with existing 5 algorithm used for SOM program." 6 Do you see that? 7 A. I do see that. 8 Q. What were the existing 9 issues that needed to be fixed? 10 A. I do not know. 11 Q. Were they the active 12 ingredient for example, was that 13 something that needed to be fixed? 14 MS. MILLER: Objection. 15 THE WITNESS: I'm not -- I'm 16 not sure of what the issues would 17 have been. As I thought the 18 active ingredient, I thought that 19 had already been changed. 20 BY MR. BAKER: 21 Q. Was there an issue with same 22 store/same month ordering not running 23 through the SOM process that needed to be 24 fixed?</p>
<p style="text-align: right;">Page 347</p> <p>1 to you on October 5, 2012, does it not? 2 A. Yes. 3 Q. Okay. So go to the next 4 page. And do you see, up at the top it 5 says AG/CVS discussion -- AGI/CVS 6 discussion. Do you know who AGI was? 7 A. I believe they were an 8 analytics company. 9 Q. Okay. Was this a different 10 analytics company than the Cegedim 11 company that Mr. Buzzeo ran? 12 A. Yes. 13 Q. Okay. It talks about 14 attendees, and it names all the 15 attendees. And you are an attendee. Do 16 you see here? 17 A. I do see that. 18 Q. Frank Devlin, that's you. 19 So you -- did you attend this conference 20 call right before you left? 21 A. I don't recall. 22 Q. What date did you leave CVS? 23 A. It may have been mid -- mid 24 October, but I may have already given my</p>	<p style="text-align: right;">Page 349</p> <p>1 MS. MILLER: Objection. 2 THE WITNESS: I do not know. 3 BY MR. BAKER: 4 Q. Was there a problem with 5 outside vendor orders that needed to be 6 fixed -- 7 MS. MILLER: Objection. 8 BY MR. BAKER: 9 Q. -- in terms of them being 10 monitored or not monitored? 11 MS. MILLER: Objection. 12 THE WITNESS: I do not know. 13 BY MR. BAKER: 14 Q. Was there anything that 15 needed to be fixed in terms of the change 16 of a drug name by a manufacturer that 17 causes history to get lost in the 18 suspicious order monitoring program that 19 was already in place that needed to be 20 fixed? 21 MS. MILLER: Objection. 22 BY MR. BAKER: 23 Q. Was there? 24 MS. MILLER: Objection.</p>

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1 THE WITNESS: I believe that
2 issue had been addressed.
3 BY MR. BAKER:
4 Q. Okay. What issues needed to
5 be fixed that you attended this
6 conference call concerning?
7 A. I don't -- I don't recall
8 attending the conference call.
9 Q. All right. Let's skip down
10 in the document. It says, "All orders
11 generated by outside vendors are not
12 pushed through the SOM process."
13 Do you remember that being
14 part of what was discussed in the
15 conference call?
16 MS. MILLER: Where is that,
17 Bill? I'm sorry.
18 MR. BAKER: Right here.
19 THE WITNESS: I don't recall
20 attending the conference call.
21 BY MR. BAKER:
22 Q. Okay. Is that what the
23 document says, that there's a conference
24 call concerning that particular --

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1 that -- that that particular issue was
2 addressed, that all orders generated from
3 outside vendors are not pushed through
4 the SOM process? Is that what the
5 document says?
6 MS. MILLER: Objection.
7 THE WITNESS: It appears to
8 be what is stated on the document,
9 yes.
10 BY MR. BAKER:
11 Q. All right. Let's go back
12 through this series of questions one more
13 time, make sure I get this on record
14 properly.
15 This is an e-mail dated
16 October 5, 2012, and which you are a
17 party to, correct?
18 A. It was sent, it looks
19 like -- well -- it looks like, yes, this
20 e-mail was sent to me, I don't recall the
21 e-mail.
22 Q. Okay. October 5, 2012. And
23 at that point it attaches what appears to
24 be subject conference call note,

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1 10/5/2012; is that right?
2 A. Correct.
3 Q. Okay. And it says note --
4 "Notes from call provided by Aaron."
5 Do you know who Aaron was?
6 Is that Aaron Burtner?
7 A. I'm surmising that may be.
8 Q. Okay. Did you know any
9 other Aaron that worked at CVS that would
10 have attended this conference call other
11 than Aaron Burtner?
12 A. No, not -- not that I can
13 recall.
14 Q. Okay. Go to the next page.
15 It says 10/5/2012 AGI/ CVS discussion.
16 And it says attendees. And it lists you,
17 right?
18 A. My name is there.
19 Q. Okay. And then go down to
20 the bottom. What does that sentence say
21 where it says "begins with all orders,"
22 that's up on your screen?
23 MS. MILLER: Again, he's
24 looking at the hardcopy.

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1 BY MR. BAKER:
2 Q. What does it say?
3 MS. MILLER: He is --
4 THE WITNESS: "All orders
5 generated for outside vendors are
6 not pushed through the SOM
7 process."
8 BY MR. BAKER:
9 Q. I could not hear you when
10 you said -- after you said outside
11 vendors.
12 "All orders generated for
13 outside vendors," now finish the sentence
14 please.
15 A. "Are not pushed through the
16 SOM process."
17 Q. Okay.
18 A. That's what is stated on the
19 document.
20 Q. Okay. It's -- is it true
21 that all orders generated for outside
22 vendors were not pushed through the SOM
23 process in the context of CVS pharmacies
24 making orders from outside vendors of

<p style="text-align: right;">Page 354</p> <p>1 narcotics?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. Is that true?</p> <p>5 MS. MILLER: Objection.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. When you were there, did you</p> <p>9 have any knowledge one way or the other</p> <p>10 whether or not that was true?</p> <p>11 MS. MILLER: Objection. To</p> <p>12 the extent you recall.</p> <p>13 THE WITNESS: Can you repeat</p> <p>14 the question?</p> <p>15 BY MR. BAKER:</p> <p>16 Q. When you were there at CVS</p> <p>17 in October 2012 attending that conference</p> <p>18 call --</p> <p>19 A. I don't recall attending the</p> <p>20 conference call.</p> <p>21 Q. Okay. Do you have any</p> <p>22 reason to disagree with what this</p> <p>23 memorandum indicates in terms of whether</p> <p>24 all orders generated for outside vendors</p>	<p style="text-align: right;">Page 356</p> <p>1 quick break? A quick --</p> <p>2 MR. BAKER: Somebody need to</p> <p>3 go to the bathroom or --</p> <p>4 MS. MILLER: I would like to</p> <p>5 if we could.</p> <p>6 MR. BAKER: Okay. Go ahead.</p> <p>7 THE VIDEOGRAPHER: Going off</p> <p>8 the record. The time is 3:00 p.m.</p> <p>9 (Short break.)</p> <p>10 THE VIDEOGRAPHER: We are</p> <p>11 going back on the record.</p> <p>12 Beginning of Media File 9. The</p> <p>13 time is 3:11.</p> <p>14 (Document marked for</p> <p>15 identification as Exhibit</p> <p>16 CVS-Devlin-P-106.)</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Let me show you Exhibit 106,</p> <p>19 Mr. Devlin. Exhibit 106 begins with</p> <p>20 Bates 29867. It's an e-mail from</p> <p>21 Mr. Craig Schiavo to Aaron Burtner. And</p> <p>22 this is the month after you left. This</p> <p>23 is in November of 2012; is that correct?</p> <p>24 A. November 27, 2012, yes, I</p>
<p style="text-align: right;">Page 355</p> <p>1 not -- or were not pushed through the SOM</p> <p>2 process, do you have any reason to</p> <p>3 disagree with that?</p> <p>4 A. I don't recall attending the</p> <p>5 conference call, so I don't feel</p> <p>6 qualified to comment on it.</p> <p>7 Q. Okay. Do you feel qualified</p> <p>8 to disagree with that statement in that</p> <p>9 memo, is what I asked you.</p> <p>10 A. What's on the memo is on the</p> <p>11 memo.</p> <p>12 Q. Okay. Do you feel qualified</p> <p>13 to disagree with it one way or the other?</p> <p>14 MS. MILLER: Objection.</p> <p>15 Asked and answered.</p> <p>16 THE WITNESS: I don't feel</p> <p>17 qualified to comment on it.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Okay. So then you could not</p> <p>20 disagree with it; is that correct?</p> <p>21 A. I could not agree nor</p> <p>22 disagree.</p> <p>23 Q. Okay. Next.</p> <p>24 MS. MILLER: Can we take a</p>	<p style="text-align: right;">Page 357</p> <p>1 had been gone a month.</p> <p>2 Q. Okay. And what day in</p> <p>3 October did you leave? Do you remember?</p> <p>4 A. I believe it was</p> <p>5 mid-October.</p> <p>6 Q. Okay. And so I want to ask</p> <p>7 you if you could address some of the</p> <p>8 things that are in this SOM end state</p> <p>9 enhancement solution that is submitted in</p> <p>10 the context of this e-mail because these</p> <p>11 things would have been in existence in</p> <p>12 November, which is just within a month</p> <p>13 after you left. Okay. Are you ready?</p> <p>14 A. Sure.</p> <p>15 Q. Okay. Let's go over this.</p> <p>16 So SOM end state enhancement solution.</p> <p>17 It says, "What are the requirements?"</p> <p>18 And it goes through 21 C.F.R. 1301.74(b).</p> <p>19 You've seen that. We've</p> <p>20 gone over this today, correct? 21 C.F.R.</p> <p>21 1301.74(b)?</p> <p>22 A. I believe we did, yes.</p> <p>23 Q. Okay. You remember</p> <p>24 Mr. Rannazzisi's letters from 2006 and</p>

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1 2007 --
2 A. Yes.
3 Q. -- that were attached to the
4 e-mail in 2008? Do you remember that?
5 A. I do.
6 Q. Okay. And it says, "Actions
7 to be taken to enhance CVS process." It
8 says, "Current algorithm, enhancement to
9 algorithm, create new algorithm. Review
10 our contracts with Buzzeo. Were they
11 fired?"
12 My question to you is, after
13 reading this, does this refresh your
14 recollection as to whether or not there
15 was discussion about firing Mr. Buzzeo's
16 company and trying to hire another
17 company?
18 MS. MILLER: Objection and
19 instruct you not to answer to the
20 extent there are any
21 attorney/client communications.
22 BY MR. BAKER:
23 Q. I'm not asking you what your
24 attorneys discussed with you. I'm

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1 asking, do you recall any -- any notion
2 that right before you left there was
3 discussions about firing Mr. Buzzeo's
4 company and hiring another company?
5 MS. MILLER: Objection.
6 Same. Instruct you not to answer
7 to the extent that the question
8 implicates any attorney/client --
9 THE WITNESS: It does.
10 MS. MILLER: -- information.
11 BY MR. BAKER:
12 Q. It requires you to tell me
13 what your attorneys said?
14 A. Yes.
15 Q. Okay. So the next thing
16 says, if you go down here to -- go up.
17 Go up. It says, "Review AGI proposal."
18 Do you see that?
19 A. I do.
20 Q. All right. Was that
21 Analysis Group? Was that the new company
22 that you were thinking about dealing with
23 before you left?
24 MS. MILLER: Objection.

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1 BY MR. BAKER:
2 Q. Was it?
3 MS. MILLER: Objection.
4 THE WITNESS: I believe AGI,
5 that that was the other company we
6 were having discussions with.
7 BY MR. BAKER:
8 Q. Okay. And then under bullet
9 Point 3, it says, "We will need" -- "we
10 will need to understand what criteria the
11 algorithm looks at and ensure it complies
12 with DEA regulations by monitoring each
13 store's orders of unusual size, orders
14 deviating substantially from a normal
15 pattern, and orders of unusual
16 frequency," correct?
17 A. That's what it states, yes.
18 Q. Okay. Let me ask, when you
19 were employed by CVS, did you really
20 understand what the algorithm was looking
21 at or not?
22 MS. MILLER: Objection.
23 THE WITNESS: I'd say from a
24 high level, I did.

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1 BY MR. BAKER:
2 Q. Okay. What was the
3 algorithm looking at from a high level?
4 MS. MILLER: Objection.
5 THE WITNESS: It was looking
6 at order activity going on in the
7 pharmacies, what type of items
8 were being ordered, frequency,
9 quantity. Those are a few of the
10 components I can remember. I
11 believe there are a lot more, but
12 that's all I can remember at this
13 time.
14 BY MR. BAKER:
15 Q. What about in relation to
16 thresholds, what was the algorithm
17 looking at?
18 MS. MILLER: Objection.
19 THE WITNESS: I don't recall
20 that.
21 BY MR. BAKER:
22 Q. You don't recall that?
23 A. I don't recall.
24 Q. Was the algorithm look --

<p style="text-align: right;">Page 362</p> <p>1 was the algorithm looking at anything in 2 reference to thresholds? 3 MS. MILLER: Objection. 4 THE WITNESS: Yeah, I 5 just -- I don't recall that. 6 BY MR. BAKER: 7 Q. All right. Do you -- do you 8 remember when we looked at the 8/25/10 9 SOM SOP document, do you remember that? 10 A. Yes. 11 Q. Exhibit Number 97. It 12 talked about thresholds being the basis 13 of the SOM system. Do you recall that? 14 A. Yes. That was -- 15 MS. MILLER: Would you like 16 to look at the document? 17 MR. BAKER: Yes, go ahead. 18 Pull it out. 19 MS. MILLER: Exhibit 97? 20 MR. BAKER: Exhibit 97. 21 THE WITNESS: I looked at a 22 lot of documents today. 23 BY MR. BAKER: 24 Q. Okay. Here it is.</p>	<p style="text-align: right;">Page 364</p> <p>1 were the primary tool, and so what I'm 2 asking, what do these algorithms do to 3 measure the primary tool that CVS was 4 using in the context of suspicious order 5 monitoring? 6 MS. MILLER: Objection. 7 THE WITNESS: You know, 8 again with the algorithm, I mean I 9 defer it to the expertise of the 10 DEA consultants that we hired. 11 BY MR. BAKER: 12 Q. Okay. So now, let's go to 13 the -- back to the other document, 14 Number 106, please. And it talks about 15 end state enhancement solutions. This is 16 again the November 2012 document, the 17 month after you left. You understand 18 that, correct? 19 A. Yes, sir. 20 Q. All right. It says here, 21 under the first checkmark, it says, "Each 22 store should have its own purchases 23 monitored separately based upon their 24 purchasing patterns to identify orders</p>
<p style="text-align: right;">Page 363</p> <p>1 A. Here we go. Okay. 2 Q. Okay. 3 A. Found it. Okay. 4 Q. Go to Bates Number 88997. 5 A. Okay. 6 Q. All right. It says here 7 under the item review report, "These 8 thresholds are the primary tool to 9 prevent stores from purchasing excessive 10 or potentially suspicious control drug 11 orders." 12 Do you see that? 13 A. I do see that. 14 Q. Okay. What did the 15 algorithm that was being implemented 16 during the time that you were at CVS do 17 to measure these thresholds, if anything? 18 MS. MILLER: Objection. 19 THE WITNESS: I'm just -- I 20 just can't recall in particular 21 how the algorithm was evaluating 22 the threshold. 23 BY MR. BAKER: 24 Q. Okay. But the thresholds</p>	<p style="text-align: right;">Page 365</p> <p>1 deviating from its normal buying pattern 2 and to identify orders of unusual 3 frequency," correct? 4 A. Yeah -- 5 MS. MILLER: Bill, can 6 you -- sorry, are you underneath 7 the -- the review AGI proposal? 8 MR. BAKER: Yeah. 9 MS. MILLER: Oh, okay. 10 MR. BAKER: Yeah. 11 MS. MILLER: And it's the -- 12 under that section. 13 THE WITNESS: The first 14 checkmark under trade? 15 MR. BAKER: Right. Right. 16 Right. Okay. 17 BY MR. BAKER: 18 Q. So under the algorithm that 19 was being used at CVS while you were 20 there, was -- did it monitor each store, 21 have its own purchasers -- purchases 22 monitored separately based upon their own 23 purchasing patterns to identify orders 24 deviating from its normal buying pattern</p>

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1 and to identify orders of unusual
 2 frequency, or not, or do you know?
 3 A. I believe that was a part of
 4 it.
 5 Q. Do you know?
 6 A. I -- you know, again trying
 7 to think back to that time and the actual
 8 details. From a high level conceptual, I
 9 thought that was a part of it. But I
 10 can't say.
 11 Q. You don't really know?
 12 A. Yeah, I can't say yes or no.
 13 Q. Okay. It says, "Orders of
 14 unusual size can be determined by
 15 comparing the order to previous order
 16 sizes, as well as comparing the order to
 17 other orders of stores in the area."
 18 Do you see that?
 19 A. I do.
 20 Q. To what extent did the
 21 algorithm, if any, that was being
 22 implemented when you were at CVS measure
 23 the CVS store's order against other
 24 orders of stores in the area, if any?

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1 A. That would probably -- that
 2 would be getting into the details around
 3 it. I mean, conceptually that sounds
 4 accurate or rings a bell, but how this
 5 actually worked within the algorithm, I
 6 can't explain that.
 7 Q. Do you know if it actually
 8 did that or not?
 9 MS. MILLER: Objection.
 10 THE WITNESS: Again, from a
 11 conceptual standpoint, I thought
 12 that was one of the components.
 13 But again, I can't say how that
 14 worked.
 15 BY MR. BAKER:
 16 Q. All right. The next
 17 checkmark says, "Will the system take
 18 into account drug combinations."
 19 Do you see that?
 20 A. I do.
 21 Q. Okay. Do you know what drug
 22 combinations were being monitored, if at
 23 all, through the algorithm-based system
 24 that was being used by CVS while you were

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1 there?
 2 A. Yeah, I'm not sure if the
 3 context as far as what's on the document
 4 here exactly what they are referencing,
 5 I'm not sure.
 6 Q. What -- okay. What drug
 7 combination should have been monitored in
 8 the context of the CVS suspicious order
 9 monitoring system while you were there as
 10 it relates to monitoring Schedule III
 11 hydrocodone combination products?
 12 MS. MILLER: Objection.
 13 THE WITNESS: I can't really
 14 comment on that. I can't -- I
 15 can't recall.
 16 BY MR. BAKER:
 17 Q. Okay. CVS, during the
 18 period of time that you were there, did
 19 not have a license to distribute
 20 Schedule II narcotics; is that correct,
 21 only Schedule IIIs?
 22 A. During what time frame?
 23 Q. When you were there.
 24 A. Not --

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1 MS. MILLER: Objection.
 2 BY MR. BAKER:
 3 Q. Go ahead. During the period
 4 of time that you were there, did CVS have
 5 a license to distribute Schedule III
 6 narcotics?
 7 A. Schedule III narcotics, yes.
 8 Q. Okay. During the time that
 9 you were there, did CVS have a license
 10 to distribute Schedule II narcotics?
 11 MS. MILLER: Did CVS?
 12 MR. BAKER: CVS.
 13 THE WITNESS: Being in the
 14 name of CVS, I don't believe so.
 15 BY MR. BAKER:
 16 Q. Okay. To your knowledge,
 17 did CVS pharmacies during the period of
 18 time that you were there, purchase all of
 19 these Schedule II products, Schedule II
 20 narcotic products from outside vendors?
 21 MS. MILLER: Objection.
 22 THE WITNESS: I believe so,
 23 because they wouldn't be getting
 24 them from the distribution

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1 centers.
 2 BY MR. BAKER:
 3 Q. Okay. And were those
 4 Schedule II narcotic products ever
 5 monitored by CVS in any way through the
 6 distribution center or through any system
 7 within CVS?
 8 MS. MILLER: Objection.
 9 BY MR. BAKER:
 10 Q. To your knowledge?
 11 A. Not knowing the particulars,
 12 but I thought the pharmacy operations
 13 department would have had a methodology
 14 to do that.
 15 Q. Okay. Do you know that one
 16 way or the other?
 17 A. I don't. I don't. It's not
 18 something that I was responsible for.
 19 Q. Okay. Was anybody
 20 monitoring those products or not?
 21 MS. MILLER: Objection.
 22 BY MR. BAKER:
 23 Q. To your knowledge. Do you
 24 know?

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1 MS. MILLER: He already
 2 testified that CVS did not
 3 distribute those products.
 4 THE WITNESS: Again, you
 5 know, CVS was not distributing
 6 Schedule IIs.
 7 BY MR. BAKER:
 8 Q. I understand. CVS was
 9 retail selling Schedule IIs though,
 10 correct?
 11 A. I believe so, yes.
 12 Q. Okay. Was anybody
 13 monitoring that at CVS, or do you know?
 14 A. It wasn't my responsibility.
 15 Q. Do you know if anybody was
 16 monitoring that?
 17 MS. MILLER: Objection.
 18 THE WITNESS: Alls I know it
 19 wasn't my responsibility.
 20 BY MR. BAKER:
 21 Q. Okay. So do you know one
 22 way or the other if anybody was
 23 monitoring that?
 24 MS. MILLER: Objection.

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1 THE WITNESS: Alls I can
 2 testify, it's not my
 3 responsibility.
 4 BY MR. BAKER:
 5 Q. I know it's not your
 6 responsibility. My question is, do you
 7 know if anybody was monitoring it.
 8 MS. MILLER: Objection.
 9 Asked and answered.
 10 BY MR. BAKER:
 11 Q. I know it wasn't your
 12 responsibility according to your answer.
 13 I'm asking do you know if anybody else,
 14 other than you, because I know you said
 15 it wasn't your responsibility.
 16 So do you know if anybody
 17 within CVS other than you was monitoring
 18 Schedule II products that were sold by
 19 CVS pharmacy?
 20 MS. MILLER: You mean sales
 21 of those products --
 22 MR. BAKER: Yes.
 23 THE WITNESS: Again --
 24 again, it wasn't my

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1 responsibility. But the pharmacy
 2 operations department would have
 3 been monitoring that.
 4 I don't. I never saw it. I
 5 wasn't aware of their system.
 6 That's just off the top of my
 7 head.
 8 BY MR. BAKER:
 9 Q. Okay. So you really don't
 10 know?
 11 MS. MILLER: Objection.
 12 THE WITNESS: I -- no. No.
 13 Well again, again I am coming
 14 back, it wasn't my responsibility.
 15 BY MR. BAKER:
 16 Q. Okay.
 17 A. But I thought in
 18 recollection that pharmacy operations
 19 would have been --
 20 Q. Understand. You think
 21 pharmacy operations might have been, but
 22 do you know for sure one way or the
 23 other?
 24 A. No, I'm not -- I'm really

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1 not in a position to answer the question,
2 sir.
3 Q. Okay. Fair enough.
4 All right. Go to Page 2 of
5 the document that we were on. We're
6 again on the document dated November 27,
7 2012. And this is the SOM end state
8 enhancement solution document. Again,
9 this is one month after you left,
10 correct?
11 A. Yes.
12 Q. Okay. If you go down to the
13 bottom --
14 A. Month and a half probably,
15 yeah, but -- yes.
16 Q. Yeah. It says, "If an order
17 is flagged, it should not be cut to a
18 smaller quantity in order to be below a
19 threshold and shipped. Orders should be
20 all is shipped if cleared or nothing is
21 shipped."
22 A. I'm sorry, sir, where --
23 Q. Do you see that?
24 A. No, I'm sorry. Where

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1 exactly?
2 Q. I'm pointing to it with my
3 finger. Do you see that?
4 A. Is that on 9869?
5 Q. Yes, sir. Do you see that?
6 "If an order is flagged, it
7 should not be cut to a smaller
8 quantity" --
9 A. Okay. I see it now. Okay.
10 Q. Okay. Do you see that?
11 A. I'm seeing it, yes.
12 Q. Okay. Now, do you
13 understand the concept if an order is
14 flagged, what that means?
15 MS. MILLER: Objection. In
16 the context of this proposed
17 algorithm?
18 BY MR. BAKER:
19 Q. In the context of the CVS
20 SOM system while you were there, what it
21 means to be flagged. Do you know what
22 that means?
23 MS. MILLER: Objection.
24 THE WITNESS: I -- I didn't

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1 create this document.
2 BY MR. BAKER:
3 Q. I'm not asking for this
4 document. Do you know what it means for
5 an order to be flagged within the SOM
6 system under the algorithm-based system?
7 Flagged, red flagged?
8 A. I would have a definition on
9 it. But I'm not sure.
10 Q. Tell me what it means.
11 A. I'm not sure how that would
12 coincide with this document.
13 Q. I understand. Tell me what
14 it means. Tell me what it means.
15 A. I think as I mentioned
16 before, flagged would be something that
17 would show up on the IRR report,
18 something that we'd want to have some
19 initial review on.
20 Q. Okay. All right. And it
21 says should not be cut to a smaller
22 quantity in order to be below a threshold
23 and shipped.
24 Do you see that?

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1 A. I see that.
2 Q. Okay. Was that going on
3 while you were there? In other words,
4 were there orders that were flagged but
5 then somebody would cut the order to a
6 smaller quantity in order to ship it to
7 be below a threshold?
8 MS. MILLER: Objection.
9 THE WITNESS: I don't know.
10 BY MR. BAKER:
11 Q. You don't know?
12 A. I don't recall that. I
13 don't recall hearing that.
14 Q. Okay. You don't know if
15 that was going on or not?
16 MS. MILLER: Objection.
17 THE WITNESS: I can't recall
18 ever hearing that.
19 BY MR. BAKER:
20 Q. Go to the next page, please,
21 the last page of this document. It says
22 here, "Testing of new system before we go
23 live." It talks about, "Do we have the
24 proper resources to handle?"

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1 Do you see that?

2 A. I see "new system before go

3 live." I see that.

4 Q. Okay. When you were at CVS,

5 and the system, the suspicious order

6 monitoring IRR-related system, was

7 centralized into one location, how many

8 people, when you left in 2012 were in

9 charge of reviewing the IRR daily? How

10 many people?

11 MS. MILLER: Objection.

12 THE WITNESS: Towards the

13 end, I believe it was definitely

14 more than one. It could have been

15 two, three.

16 BY MR. BAKER:

17 Q. Do you know?

18 A. No. I can't -- I can't

19 recall 100 percent.

20 Q. Okay. At one time we

21 discussed it was one person. That was

22 Mr. Mortelliti --

23 A. Right.

24 Q. -- in Lumberton.

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1 A. Right.

2 Q. That was back in 2010,

3 right?

4 A. Yes. The program evolved.

5 Q. Right. And then we talked

6 about it got sent out to the distribution

7 centers sometime in 2010 after the SOM

8 SOP was inserted. Do you remember that?

9 A. We did.

10 MS. MILLER: Objection.

11 BY MR. BAKER:

12 Q. Okay. At some time during

13 2010, was it sent out to all the

14 distribution centers to be done?

15 A. There was -- again, I can't

16 recall exact dates. But there was a

17 period of time where the distribution

18 centers were involved in the process.

19 Q. And then you remember I

20 showed you a document where it said that

21 in March of 2011 it was being moved to

22 Knoxville? Do you remember that?

23 MS. MILLER: Objection.

24 THE WITNESS: I do recall

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1 you showing me a document that

2 said that.

3 BY MR. BAKER:

4 Q. Okay. And at that point,

5 was it just one person, two people, or

6 what?

7 MS. MILLER: Objection.

8 Asked and answered.

9 THE WITNESS: Yeah, I think

10 at that time I said it may have

11 been a couple of people.

12 BY MR. BAKER:

13 Q. Do you know who the couple

14 of people were?

15 A. Their names escape me.

16 Q. Okay. And it stayed there

17 until what period of time?

18 A. Stayed where?

19 Q. In Knoxville?

20 A. I believe it was there -- as

21 far as when I left, I believe it was

22 still there.

23 Q. Okay. All right. So when

24 you left do you know whether it was one

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1 person, two people, or more than two

2 people that were doing the IRR reviews?

3 MS. MILLER: Objection.

4 Asked and answered.

5 BY MR. BAKER:

6 Q. Do you know?

7 A. I thought it was two, three

8 people doing it.

9 Q. Okay. Do you know one way

10 or the other?

11 A. I -- I'm just trying to

12 think back. I mean, it was --

13 Q. Who should we ask that would

14 have better knowledge than you that you

15 think might know the answer to that

16 question better than you?

17 MS. MILLER: Objection.

18 THE WITNESS: It could be a

19 variety of resources.

20 BY MR. BAKER:

21 Q. Okay. Well, give me the --

22 give me the person, if you had to get

23 that answer from, that you think would be

24 the best person to ask that question of,

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1 based upon your knowledge of who worked
2 there at the time.
3 MS. MILLER: Objection.
4 This is Knoxville, Bill?
5 MR. BAKER: Correct.
6 MS. MILLER: Still?
7 MR. BAKER: Correct.
8 THE WITNESS: Probably look
9 at the human resource department
10 and look at job titles.
11 BY MR. BAKER:
12 Q. How about Pam Hinkle? Would
13 she be somebody to ask that question to,
14 do you think?
15 A. Yeah, you can probably ask
16 Pam.
17 Q. Okay. Why would she be a
18 good person to ask? What was her
19 position?
20 A. Because she would have been
21 overseeing the process.
22 Q. In Knoxville?
23 A. Yes.
24 Q. Okay. Very good.

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1 All right. So you see down
2 on this list here, it says, "Are OV
3 orders included in the new system?"
4 Do you see that?
5 A. Yes.
6 Q. That's outside vendor
7 orders. I want you to assume that's what
8 that means. So that's being asked.
9 So at the time that you left
10 in 2012, October, were outside vendor
11 orders being included within the
12 suspicious order monitoring system at
13 CVS, to your knowledge?
14 MS. MILLER: Objection.
15 Asked and answered.
16 THE WITNESS: I don't
17 believe so.
18 MR. BAKER: Okay. I'm going
19 to take a break. And I may pass
20 it over to my partner here, Jimmy
21 DeRoche. Give me just a second to
22 review my notes.
23 MS. MILLER: Can we --
24 THE WITNESS: Ten minutes or

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1 so?
2 MR. BAKER: No, I just need,
3 like, two or three. I mean, if
4 y'all need more than that -- I'm
5 just, you know, going to sit here
6 and take a look at my notes.
7 THE WITNESS: If you don't
8 mind, I'm going to take a couple
9 minutes.
10 THE VIDEOGRAPHER: Going off
11 the record. The time is 3:33.
12 (Short break.)
13 THE VIDEOGRAPHER: We are
14 going back on the record.
15 Beginning of Media File 10. The
16 time is 3:43.
17 - - -
18 EXAMINATION
19 - - -
20 BY MR. DeROCHE:
21 Q. Mr. Devlin, my name is Jim
22 DeRoche. I have some hopefully brief
23 follow-up questions for you.
24 First of all, where do you

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1 reside now again? I didn't hear that.
2 A. I live in Pocasset, in
3 Massachusetts.
4 Q. Okay. Is that a suburb of
5 Boston of some sort?
6 A. It's actually part of Cape
7 Cod.
8 Q. A-ha. Okay.
9 When did you come to
10 Washington?
11 A. When did I come to
12 Washington?
13 Q. Yeah.
14 A. I arrived -- let's see,
15 today is Thursday, right?
16 Q. Correct.
17 A. Yeah, I arrived on Tuesday.
18 Q. You arrived on Tuesday?
19 A. Yes.
20 Q. Okay. And what were you
21 doing for -- since -- between Tuesday and
22 today?
23 A. I had some --
24 MS. MILLER: Objection.

<p style="text-align: right;">Page 386</p> <p>1 BY MR. DeROCHE: 2 Q. Excuse me? I didn't hear 3 what you said. 4 MS. MILLER: Go ahead. 5 BY MR. DeROCHE: 6 Q. You can answer the question, 7 sir. 8 A. I -- I had some prep time. 9 Q. So you prepared for this 10 deposition? 11 A. Yes. 12 Q. Okay. You met with lawyers 13 here at the office we're sitting in; is 14 that correct? 15 A. Yes. 16 Q. And you met on -- did you 17 meet on Tuesday or did you arrive late 18 Tuesday? 19 A. Briefly Tuesday. 20 Q. And then you met on 21 Wednesday as well, spent all day here? 22 MS. MILLER: Objection. 23 BY MR. DeROCHE: 24 Q. You can answer.</p>	<p style="text-align: right;">Page 388</p> <p>1 Q. Did you talk to any folks 2 from CVS who you used to work with, about 3 this deposition? 4 A. No. 5 Q. Other than the lawyers, have 6 you spoken to anybody else? 7 A. My wife knows I'm here. 8 Q. Other than her, no one else? 9 A. My son and daughter know I'm 10 here. 11 Q. Other than family, no 12 other -- no other individuals? 13 A. That's about it. 14 Q. Okay. So you didn't try to 15 reach out to folks you used to work with, 16 like Ms. Hinkle or -- 17 A. No. 18 Q. -- anybody else? 19 A. No. 20 Q. Judy Hughes? 21 A. No. No. 22 Q. Do you stay in contact with 23 any people from CVS that you used to work 24 with?</p>
<p style="text-align: right;">Page 387</p> <p>1 A. Most of the day. 2 Q. Okay. You looked at 3 documents? 4 A. Some documents, yes. 5 Q. Okay. You have an 6 understanding of what this case is about, 7 correct? 8 MS. MILLER: Objection. 9 THE WITNESS: Not -- not in 10 any great detail. I mean high 11 level. High level, but there's a 12 lot more I don't know than I do 13 know. 14 BY MR. DeROCHE: 15 Q. Sure. I think that applies 16 to most of us. 17 When did you find out that 18 you were being deposed in connection with 19 this case? 20 A. Early December maybe. 21 Q. Okay. So you've known for 22 approximately a month that your 23 deposition was going to be taken? 24 A. About that, yeah.</p>	<p style="text-align: right;">Page 389</p> <p>1 A. Very few, but just an 2 occasional hello. But not -- like I 3 really haven't seen people that I worked 4 with from CVS or -- so... 5 Q. Did you leave on good terms 6 in your view? 7 MS. MILLER: Objection. 8 THE WITNESS: I mean I left 9 on my own. 10 BY MR. DeROCHE: 11 Q. You don't have any animosity 12 towards CVS? 13 MS. MILLER: Objection. 14 THE WITNESS: No. It was an 15 opportunity to be involved in a 16 lot of, you know, a lot of 17 responsibility and a lot of 18 project management work. And I 19 think professionally it was a good 20 opportunity, and at the time a 21 better opportunity developed. 22 BY MR. DeROCHE: 23 Q. Sure. Do you have clients 24 in Washington DC that you came to see or</p>

<p style="text-align: right;">Page 390</p> <p>1 did you just come for this deposition?</p> <p>2 A. I came for the deposition.</p> <p>3 Q. So since Tuesday, you</p> <p>4 focused on this deposition that we're</p> <p>5 having here today?</p> <p>6 A. I've gone and -- getting</p> <p>7 back to the hotel room, I've done some</p> <p>8 work for other clients.</p> <p>9 Q. Okay. All right. I want to</p> <p>10 try to understand where logistics loss</p> <p>11 prevention fit in the -- in the hierarchy</p> <p>12 of CVS. I don't think I understand that</p> <p>13 at all.</p> <p>14 So can you explain logistics</p> <p>15 loss prevention and where it fit in, in</p> <p>16 terms of -- of the structure at CVS?</p> <p>17 A. Sure. I was -- so I was a</p> <p>18 part of the overall loss prevention</p> <p>19 department. And there is a field loss</p> <p>20 prevention department which would focus</p> <p>21 on stores. There was logistics loss</p> <p>22 prevention which focused, supported</p> <p>23 distribution centers. There is also some</p> <p>24 corporate support around loss prevention</p>	<p style="text-align: right;">Page 392</p> <p>1 I always had the distribution centers as</p> <p>2 a main part of what I was doing.</p> <p>3 Q. And when you took over as</p> <p>4 director of logistics loss prevention,</p> <p>5 were you sort of the top dog in the</p> <p>6 logistics loss prevention department?</p> <p>7 A. I managed the department,</p> <p>8 so...</p> <p>9 Q. And that was at least since</p> <p>10 2005 you had held that position?</p> <p>11 A. Yeah, again as I testified</p> <p>12 earlier, I mean there's typical --</p> <p>13 typical corporate America. I mean --</p> <p>14 Q. Sure.</p> <p>15 A. -- you can have same title</p> <p>16 but different levels.</p> <p>17 Q. Great.</p> <p>18 A. So, you know, I was a</p> <p>19 director level different in 2005 than say</p> <p>20 a director level I was in, say, 2003.</p> <p>21 But it was just a -- you know, it was</p> <p>22 kind of an evolution as the company</p> <p>23 continued to grow and even some of my</p> <p>24 responsibilities grew.</p>
<p style="text-align: right;">Page 391</p> <p>1 also. And I believe there also was some</p> <p>2 loss prevention support for some of the</p> <p>3 Caremark mail order sites when I was</p> <p>4 present.</p> <p>5 Q. Okay. And so logistics loss</p> <p>6 prevention focused primarily on the</p> <p>7 distribution centers?</p> <p>8 A. That was -- that was a --</p> <p>9 you know, a big component. I also</p> <p>10 provided some support to some of the</p> <p>11 Caremark mail order sites from a safety</p> <p>12 standpoint.</p> <p>13 Q. That was under loss --</p> <p>14 logistics loss prevention as well?</p> <p>15 A. It was.</p> <p>16 Q. Other than the safety</p> <p>17 that -- oversight that you may have</p> <p>18 provided to the Caremark mail order</p> <p>19 division, otherwise besides that, you did</p> <p>20 focus on the distribution centers?</p> <p>21 A. That was my primary focus.</p> <p>22 I mean I had a variety of</p> <p>23 responsibilities during my career.</p> <p>24 Some -- some retail, some corporate. But</p>	<p style="text-align: right;">Page 393</p> <p>1 Q. So the director level that</p> <p>2 you attained in 2005 was, was that the</p> <p>3 highest level -- director level --</p> <p>4 A. No.</p> <p>5 Q. -- in logistics loss</p> <p>6 prevention?</p> <p>7 MS. MILLER: Give him a</p> <p>8 chance to finish his question,</p> <p>9 please.</p> <p>10 THE WITNESS: Oh, sorry.</p> <p>11 BY MR. DeROCHE:</p> <p>12 Q. Highest level in logistics</p> <p>13 loss prevention.</p> <p>14 A. There are -- you know, I</p> <p>15 guess I was the director of logistics,</p> <p>16 loss prevention. As far as my position</p> <p>17 goes on the director level, I was</p> <p>18 probably in the middle of the levels of</p> <p>19 directors, like there could have -- you</p> <p>20 know, there could have been another --</p> <p>21 there could have been -- like I could</p> <p>22 have attained another higher level of</p> <p>23 director and still be in logistics, loss</p> <p>24 prevention.</p>

<p style="text-align: right;">Page 394</p> <p>1 But there wasn't -- you 2 know, I certainly reported in to someone 3 else. But that individual had, you know, 4 other responsibilities. 5 Q. You reported to Judy Hughes, 6 I think you said; is that correct? 7 A. Yes. 8 Q. And was Ms. Hughes also 9 considered a director of logistics loss 10 prevention or did she have some other 11 title? 12 A. I believe she was just 13 director of loss prevention. 14 Q. Okay. She was -- so 15 logistics loss prevention is a department 16 within loss prevention? 17 A. It is. It is. 18 Q. She was at the loss 19 prevention level, as opposed to the 20 logistics loss prevention level? 21 MS. MILLER: Frank, just 22 give him a chance -- 23 MR. DeROCHE: Yeah, sure. 24 MS. MILLER: -- so you're</p>	<p style="text-align: right;">Page 396</p> <p>1 BY MR. DeROCHE: 2 Q. You wouldn't disagree with 3 that? You were -- you were the top guy 4 in logistics loss prevention at that 5 point? 6 MS. MILLER: Objection. 7 THE WITNESS: As a -- you 8 know, as a part of, keeping in 9 mind I was still in the overall 10 loss prevention department. 11 BY MR. DeROCHE: 12 Q. Sure. I understand. 13 Everyone needs got a boss. 14 A. Right. And even -- you 15 know, and -- 16 Q. At least at home, but be 17 that as it may. 18 A. Even, like, my business card 19 would say director of logistics loss 20 prevention. You know, from a -- I guess 21 a budgetary payroll standpoint, it may 22 just say director loss prevention. 23 Director 1 or Director 2. CVS was big -- 24 changed, you know, grading systems and</p>
<p style="text-align: right;">Page 395</p> <p>1 not stepping on him. 2 BY MR. DeROCHE: 3 Q. Trying to get a distinction 4 so I understand. So in terms of 5 directors of logistics, loss prevention, 6 you were -- you were the top person of 7 logistics, loss prevention as of 2005? 8 MS. MILLER: Objection. 9 BY MR. DeROCHE: 10 Q. Is that correct? 11 A. My title was director of 12 logistics, loss prevention. 13 Q. You saw the SOP earlier that 14 mentioned that you were the one, the only 15 one, at least according to the SOP, that 16 was going to be reporting to the DEA any 17 suspicious orders identified and that 18 referred to you as the director of 19 logistics loss prevention. Seems to 20 indicate -- seems to indicate that you 21 are the top dog in logistics loss 22 prevention as of at least when that SOP 23 was prepared in 2011. 24 MS. MILLER: Objection.</p>	<p style="text-align: right;">Page 397</p> <p>1 whatnot so. 2 Q. I understand it was a 3 multi-billion dollar company at the time 4 that you were there. Probably even 5 bigger now. 6 MS. MILLER: Objection. 7 BY MR. DeROCHE: 8 Q. So there was many levels of 9 corporate structure, I would assume, that 10 you had to answer through? 11 MS. MILLER: Objection. 12 THE WITNESS: Can you repeat 13 that? 14 BY MR. DeROCHE: 15 Q. Did you have -- let's put it 16 this way. Logistics, loss prevention, 17 did you have a budget? 18 A. Yes. 19 Q. And you were ultimately 20 responsible for budget issues, I take it, 21 as the director? 22 A. For my piece of the pie. 23 Q. Right. 24 A. The overall loss prevention</p>

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1 budget, I was tasked with managing that.
2 Q. Okay. You knew that at
3 least with respect to the Rx distribution
4 centers, that they had a license that was
5 issued by the Drug Enforcement Agency,
6 correct?
7 A. Yes.
8 Q. And were you responsible as
9 director of logistics, loss prevention in
10 ensuring that those licenses were
11 maintained?
12 MS. MILLER: Objection.
13 THE WITNESS: I'm not sure
14 quite what you mean by maintained.
15 BY MR. DeROCHE:
16 Q. Excuse me?
17 A. I'm not quite sure what you
18 mean by maintained.
19 Q. That each of the -- each of
20 the Rx distribution centers continued to
21 be licensed by the Drug Enforcement
22 Agency to distribute controlled
23 substances.
24 MS. MILLER: Objection.

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1 THE WITNESS: There was a --
2 you know, people responsible for
3 licensing and registration within
4 company.
5 BY MR. DeROCHE:
6 Q. Okay. So logistics loss
7 prevention didn't handle that?
8 A. No. Like if you, like to
9 renew a DEA license, I wouldn't be
10 involved in that.
11 Q. Okay. What about complying
12 with the conditions upon which that
13 license is issued?
14 MS. MILLER: Objection.
15 THE WITNESS: It could be
16 maybe certain components, but
17 not -- not full responsibility for
18 all of it.
19 BY MR. DeROCHE:
20 Q. Okay. The component -- one
21 of the components -- one of the
22 conditions, I like to call it, to the
23 license is that the distribution centers
24 design and maintain a system to identify

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1 suspicious orders?
2 MS. MILLER: Objection.
3 BY MR. DeROCHE:
4 Q. You're aware of that, right?
5 MS. MILLER: Objection.
6 THE WITNESS: As per the --
7 yes.
8 BY MR. DeROCHE:
9 Q. Okay. And you understood
10 that there was, in fact, a division
11 within the DEA that was called the
12 department of diversion that focused on
13 the diversion of controlled drugs from
14 the legal use of those drugs. You're
15 aware that there's a diversion
16 department?
17 A. I wouldn't necessarily use
18 that term. I mean, just -- to me, the
19 DEA was the DEA.
20 Q. Well, they sent diversion
21 investigators at times to inspect --
22 A. Right, right.
23 Q. Right. So you know --
24 A. But we just -- we always

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1 just said the DEA is here.
2 Q. DEA is showing up, knocking
3 on the door?
4 A. Right. We didn't I guess
5 formally get into the exact title. It
6 was just, the DEA is here.
7 Q. And you understood that the
8 concern of DEA was that controlled
9 substances like hydrocodone combination
10 products not be diverted into street
11 drugs, for lack of a better term, right?
12 MS. MILLER: Objection.
13 BY MR. DeROCHE:
14 Q. You understood that, right?
15 MS. MILLER: Objection.
16 THE WITNESS: I mean, I
17 looked at my role to ensure the
18 safety and security of control
19 drugs, you know, upon receipt into
20 the distribution center, and then
21 to upon delivery to the CVS retail
22 store.
23 BY MR. DeROCHE:
24 Q. Except the retails -- well,

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<p>1 part of the responsibility as you've been 2 talking about all day today, for a 3 distribution center, was to ensure that 4 orders were legitimate orders that 5 weren't going to lead to diversion. 6 You're aware of that? 7 MS. MILLER: Objection. 8 THE WITNESS: Again, I think 9 I spoke earlier. I was protecting 10 the integrity, you know, from a 11 security, safety standpoint and to 12 ensure that they are, you know, 13 falling into the proper hands. 14 BY MR. DeROCHE: 15 Q. Correct. Because if they 16 fall into the -- not the proper hands, 17 again you have things like an epidemic of 18 opioid use of prescription drugs. 19 MS. MILLER: Objection. 20 BY MR. DeROCHE: 21 Q. And obviously you don't want 22 that, right? 23 MS. MILLER: Objection. 24 THE WITNESS: No. I mean,</p>	<p>1 THE WITNESS: I guess part 2 of it would be a case-by-case 3 basis. You would have to look at 4 how was it paid for. Was it, you 5 know, a legitimate prescription. 6 I mean, there's a lot -- a lot 7 goes into it. I've always, you 8 know shied away from just blanket 9 statements. 10 BY MR. DeROCHE: 11 Q. Sure. 12 A. I mean, just -- each 13 situation, it's separate and, you know, 14 you have to evaluate the facts. 15 Q. Sure. There could be 16 varying ways through which drugs are 17 diverted besides theft. You just 18 mentioned one, illegitimate prescription. 19 Even if it's brought in, filled, and the 20 full price is paid to CVS, that could be 21 an instance of diversion, just like if 22 someone stole it off the shelf. You 23 agree with that, right? 24 MS. MILLER: Objection.</p>
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<p>1 my -- my focus really was, you 2 know, during my time there, I 3 mean, it was, you know, preventing 4 theft. I mean, that was, you 5 know -- as far as other terms or 6 whatnot, it was just, you know, we 7 discussed, you know, how to ensure 8 the safety and security of the 9 control drugs. 10 BY MR. DeROCHE: 11 Q. I understand that, you know, 12 theft can be one component by which drugs 13 are diverted. But you recognize, don't 14 you, and didn't you recognize at the 15 time, that diversion could occur through 16 other means besides theft? 17 MS. MILLER: Objection. 18 Asked and answered. 19 THE WITNESS: Ultimately, 20 it's theft. 21 BY MR. DeROCHE: 22 Q. Even if the drugs are paid 23 for to CVS? 24 MS. MILLER: Objection.</p>	<p>1 THE WITNESS: Again, I come 2 back to, you know, having -- I'm 3 responsible to protect the 4 controls and the safety and 5 security and make sure they fall 6 into the proper hands. I mean, 7 that's -- that's the ultimate 8 goal. 9 BY MR. DeROCHE: 10 Q. Right. And that was one of 11 the conditions to the distribution 12 centers getting their license from the 13 DEA to distribute these drugs, is that 14 CVS played by the rules and did its part 15 to police and prevent diversion of those 16 drugs? 17 MS. MILLER: Objection. 18 BY MR. DeROCHE: 19 Q. You would agree, right? 20 A. You know, I -- you know, I 21 guess when I was involved I was, you 22 know, certainly to ensure we were meeting 23 the requirements of the DEA regulations. 24 I mean that's -- that's what, you know,</p>

<p style="text-align: right;">Page 406</p> <p>1 my focus was always on.</p> <p>2 Q. Okay. In 2006, when you</p> <p>3 were the director of logistics loss</p> <p>4 prevention at CVS, what steps were being</p> <p>5 taken by CVS to prevent the diversion of</p> <p>6 controlled substances, if you can recall?</p> <p>7 A. From what I can recall, I</p> <p>8 know there was certainly instructions to</p> <p>9 the employees that were fulfilling any</p> <p>10 control drug order, any, you know, who</p> <p>11 felt as -- you know, any excessive</p> <p>12 quantity, in which I can't recall an</p> <p>13 actual number that would be. But any,</p> <p>14 you know, what, you know, the employees,</p> <p>15 after a while you get used to, you know,</p> <p>16 filling orders. So they would, you know,</p> <p>17 start to get a feel for, you know, this</p> <p>18 is a -- this seems to be an average</p> <p>19 order. Or if they felt that it was an</p> <p>20 above average order, then they were</p> <p>21 instructed to notify their supervisor who</p> <p>22 could be a pharmacy supervisor or</p> <p>23 pharmacy manager.</p> <p>24 And then from there, you</p>	<p style="text-align: right;">Page 408</p> <p>1 Q. How -- how were they</p> <p>2 expected to make those reports?</p> <p>3 A. They would verbally</p> <p>4 communicate to their supervisor.</p> <p>5 Q. What training did they</p> <p>6 receive in terms of identifying</p> <p>7 suspicious orders?</p> <p>8 A. That's something I was not</p> <p>9 involved in.</p> <p>10 Q. Was that part of logistics</p> <p>11 loss prevention department to provide</p> <p>12 that training?</p> <p>13 A. It probably would be more of</p> <p>14 an operational component.</p> <p>15 Q. So who was supposed to</p> <p>16 provide that training?</p> <p>17 A. I believe it would be up to</p> <p>18 the pharmacy supervisor or pharmacy</p> <p>19 manager.</p> <p>20 Q. Was there any written</p> <p>21 training material at that time?</p> <p>22 A. I don't recall.</p> <p>23 Q. Was there any written</p> <p>24 procedure instructing the pickers and</p>
<p style="text-align: right;">Page 407</p> <p>1 know, to, you know, research, you know,</p> <p>2 why, you know, why is this order, you</p> <p>3 know, excessive.</p> <p>4 Also, I know the -- the</p> <p>5 field had -- and I think I testified</p> <p>6 earlier, I don't recall all the details</p> <p>7 around the Prescription Drug Monitoring</p> <p>8 Report. That would also play into the --</p> <p>9 you know, what I would consider overall</p> <p>10 prevention or integrity of orders.</p> <p>11 Q. Anything else?</p> <p>12 A. That -- you know, I'm sure</p> <p>13 there were probably other measures in</p> <p>14 place, but that's really what I recall at</p> <p>15 this time.</p> <p>16 Q. With respect to the folks in</p> <p>17 the DC that were picking and filling the</p> <p>18 orders from the control cage, is that</p> <p>19 what you're talking about when you say</p> <p>20 these personnel --</p> <p>21 A. Yes.</p> <p>22 Q. -- were expected to report?</p> <p>23 Yes?</p> <p>24 A. Yes. The employees.</p>	<p style="text-align: right;">Page 409</p> <p>1 packers how to identify suspicious</p> <p>2 orders?</p> <p>3 A. I can't recall.</p> <p>4 Q. Did they -- did the pickers</p> <p>5 and packers have access to dispensing</p> <p>6 data for the pharmacies that they were</p> <p>7 picking the orders for?</p> <p>8 A. The dispensing data.</p> <p>9 Q. Correct.</p> <p>10 A. Can you -- can you explain</p> <p>11 that?</p> <p>12 Q. Dispensing data, you don't</p> <p>13 know what dispensing data means?</p> <p>14 A. I'm just -- how are you</p> <p>15 using it?</p> <p>16 Q. What's that?</p> <p>17 A. How are you using it?</p> <p>18 Q. I'm using it in the sense</p> <p>19 that CVS has dispensing data, meaning</p> <p>20 data showing how a pharmacy has dispensed</p> <p>21 the drugs that it's selling to its</p> <p>22 customers in terms of who they are, where</p> <p>23 they came from --</p> <p>24 A. Yeah.</p>

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<p>1 Q. -- what they purchased, how 2 often they purchased it, and so forth. 3 That, that kind of data, pharmacy level 4 data. 5 MS. MILLER: Give him a 6 chance -- 7 BY MR. DeROCHE: 8 Q. Do you have access to that? 9 MS. MILLER: -- to finish 10 his question. 11 Objection. 12 THE WITNESS: I'm not aware 13 of a report, per se. But I -- I 14 do know the employees that worked 15 in the control drug cage. 16 They were, some of them, you 17 know, better seasoned employees. 18 And they would -- you know, 19 they -- they would get a feel. 20 You know, they would get a feel 21 for, you know, some average -- 22 kind of what average history and 23 what would seem outside the 24 average.</p>	<p>1 know, it wasn't -- I'm not saying it was 2 a report, per se. They would just -- 3 they would -- they would get a feel. I 4 mean they were seasoned -- seasoned, 5 well-trained employees. And it's a -- I 6 know in the distribution center, you 7 know, it was -- you know, that was viewed 8 as a desirable position. You know, it 9 was, you know, good quality employees 10 that were involved in that. 11 Q. They are -- they are picking 12 control drugs in the control cage; is 13 that correct? 14 A. In most instances, yes. 15 Q. There are not picking 16 noncontrolled drugs? 17 A. They could be times, but the 18 control drugs would be picked separately. 19 Q. Okay. So generally they are 20 not going to know what the volume of 21 noncontrolled drugs were being shipped to 22 a particular store, to compare that to 23 the control drugs for the most part? 24 A. I mean, again, it would</p>
Page 411	Page 413
<p>1 I mean, they would -- they 2 would -- over a period of time 3 they would get a feel for that. 4 BY MR. DeROCHE: 5 Q. The average meaning, what do 6 you mean by average? 7 A. As far as what a typical 8 store would order from a control drug 9 standpoint. 10 Q. So you're saying they'd get 11 a feel for what -- say they have a 12 hundred stores that they are picking 13 control drugs for. 14 A. Right. 15 Q. What the average would be? 16 MS. MILLER: Give him a 17 chance -- just for the 18 transcript -- to finish his 19 question before you speak. 20 BY MR. DeROCHE: 21 Q. You can answer. 22 A. It's just they would -- you 23 know, again, they -- they would get a 24 feel for what stores were ordering. You</p>	<p>1 depend on the size of the facility. You 2 know, the volume being produced. You 3 know, you -- I don't think it's 4 necessarily that, A, an employee in the 5 control drug cage was there all day. And 6 I -- you know, I'd have to defer to 7 operational people to comment more 8 intelligently on this than me. 9 But, you know, you know, 10 from my observations and what I can 11 recall from years ago, that you could 12 have someone that's assigned to the 13 control drug cage and, you know, they 14 could be in there for one hour and then 15 the rest of the day could be picking in 16 the noncontrol drug area. 17 Q. When a CVS DC receives its 18 license from the DEA to distribute 19 Schedule III drugs, the requirement was 20 that it design and operate a system to 21 expose suspicious orders and to identify 22 suspicious orders and to act on them. 23 MS. MILLER: Objection. 24 BY MR. DeROCHE:</p>

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1 Q. So I guess what I'm saying
2 is, do you know what the word "design"
3 means?
4 MS. MILLER: Objection.
5 THE WITNESS: Design, I mean
6 I would look at having processes
7 in place.
8 BY MR. DeROCHE:
9 Q. So someone has to
10 consciously, in other words, make a
11 decision, we're going to -- we're going
12 to -- we're going to design this system
13 with the goal in mind of identifying
14 suspicious orders?
15 MS. MILLER: Objection.
16 BY MR. DeROCHE:
17 Q. And that's been a
18 requirement since 1972?
19 MS. MILLER: Objection.
20 BY MR. DeROCHE:
21 Q. So do you know who designed
22 the system you just mentioned of having
23 the pickers and packers develop some sort
24 of idea over time of what an average

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1 order might look like to compare to the
2 orders they are filling?
3 MS. MILLER: Objection.
4 BY MR. DeROCHE:
5 Q. Who designed that system, do
6 you know?
7 MS. MILLER: Objection.
8 THE WITNESS: I wouldn't
9 know.
10 BY MR. DeROCHE:
11 Q. Do you know if anybody
12 designed that system?
13 MS. MILLER: Objection.
14 THE WITNESS: I wouldn't
15 know.
16 BY MR. DeROCHE:
17 Q. Do you understand what
18 quality control means?
19 MS. MILLER: Objection.
20 THE WITNESS: Yes, in some
21 context.
22 BY MR. DeROCHE:
23 Q. Yeah, I understand. It can
24 mean a lot of different things depending

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1 on what you're trying to assess.
2 A. Right. Like professionally
3 I've learned quality control of, you
4 know, one company is different than
5 quality control at another company.
6 Q. But in general, it's a
7 method by which you test to see if a
8 system that you put in place is actually
9 doing what it is intended, you'd agree
10 with that, a fair assessment of what
11 quality control might mean?
12 MS. MILLER: Objection.
13 THE WITNESS: Can you repeat
14 that?
15 BY MR. DeROCHE:
16 Q. Yeah. Quality control means
17 you're looking at a system you've put in
18 place and you're trying to assess whether
19 or not it's fulfilling its -- what you've
20 intended the system to do.
21 MS. MILLER: Objection.
22 THE WITNESS: You can also,
23 to have quality control, just
24 built into normal operational

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1 practices.
2 BY MR. DeROCHE:
3 Q. Sure. Do you know if there
4 was any quality control system that was
5 built into the pickers and packers trying
6 to figure out what's suspicious and
7 what's not system?
8 MS. MILLER: Objection.
9 THE WITNESS: I know from a
10 quality control standpoint, when
11 they came to --
12 BY MR. DeROCHE:
13 Q. I'm sorry. What's that?
14 I -- I missed that. I apologize.
15 A. I was giving you time to
16 read.
17 Q. Go ahead.
18 A. From a quality control
19 standpoint, and I know there were
20 processes in place to double-check the
21 controls being picked to make sure that
22 they were accurate.
23 Q. Sure. Picking accuracy I
24 understand, but --

<p style="text-align: right;">Page 418</p> <p>1 A. So -- but -- so if you 2 had -- 3 Q. They were scored, right, for 4 accuracy in terms of picking and I 5 understand all that. But I'm not talking 6 about that. 7 I'm talking about whether or 8 not you did any quality control at all to 9 decide -- to determine whether or not 10 leaving it up to the pickers and packers 11 to somehow identify suspicious orders 12 actually was an efficient and appropriate 13 system to actually try to identify 14 suspicious orders. 15 MS. MILLER: Objection. 16 BY MR. DeROCHE: 17 Q. Was there any quality 18 control on that score? 19 MS. MILLER: Objection. 20 THE WITNESS: You know, 21 again, you know, as I mentioned 22 earlier, there were various 23 components that I say could tie 24 into suspicious order monitoring,</p>	<p style="text-align: right;">Page 420</p> <p>1 second person saying, "Well, there seems 2 to be a lot of hydrocodone in this tote, 3 maybe we should look at it," do you know 4 if -- first of all, do you know of any 5 instance when that actually happened, 6 that you can recall? Specific instance, 7 I mean. 8 MS. MILLER: Objection. 9 THE WITNESS: That's -- I 10 wouldn't -- I wouldn't be involved 11 in that. 12 BY MR. DeROCHE: 13 Q. Okay. And in terms of the 14 use of the PDMR, was there any kind of 15 written policy that incorporated the PDMR 16 into any kind of system to identify 17 suspicious orders? 18 A. I don't recall the PDMR 19 procedures. It's not a system that I 20 used or I was familiar with, so I -- 21 Q. Your answer is no? 22 A. I really couldn't answer 23 that. 24 Q. Okay. Are you aware of any</p>
<p style="text-align: right;">Page 419</p> <p>1 you know, not only the 2 pickers-packers, but reports on 3 the field level. 4 But I would -- I would say 5 as far as the double-checks that 6 go around the picking of controls 7 and if you had one employee that 8 had an excessive amount of a 9 control item, and yet that's 10 being -- that order is being 11 double-checked by another 12 employee, that could be another 13 opportunity to -- to flag, hey, 14 wait a minute, you know, maybe we 15 better get our supervisor involved 16 before we let this go. 17 BY MR. DeROCHE: 18 Q. I understand that. That's 19 picking accuracy again. 20 A. Yes. 21 Q. I understand that someone 22 checks that to make sure that what's 23 ordered is what's in the tote. And I'm 24 asking you -- and again, even with that</p>	<p style="text-align: right;">Page 421</p> <p>1 suspicious orders that were reported to 2 the DEA during the entire time that you 3 were at CVS -- 4 MS. MILLER: Objection. 5 Asked -- 6 BY MR. DeROCHE: 7 Q. -- that emanated from the 8 pickers and packers process that you 9 mentioned? 10 A. Not that I can recall. 11 Q. Do you recall any instance 12 when a picker and packer flagged an order 13 that was anything other than an excessive 14 amount? In other words, an unusual 15 amount. 16 A. Again, I wouldn't have 17 exposure to that in the position that I 18 was in. 19 Q. You were aware that, at 20 least from the DEA standpoint, looking 21 solely at large amount, large volume 22 alone wasn't good enough in terms of 23 complying with the regulations requiring 24 a system in place to identify suspicious</p>

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1 orders. You're aware of that?
2 MS. MILLER: Objection.
3 THE WITNESS: There were --
4 from, again, a high level, I know
5 there were multiple components
6 that went into what could be a
7 potentially suspicious situation.
8 BY MR. DeROCHE:
9 Q. Unusual size is only one of
10 those?
11 A. That could be one.
12 Q. Unusual frequency, correct?
13 A. Sounds accurate.
14 Q. Unusual pattern, you know,
15 an order that deviates from normal
16 pattern?
17 A. That could be a component.
18 Q. In 2008, the Buzzeo firm
19 delivered an algorithm to CVS that was
20 intended to be incorporated into the
21 ordering system to identify suspicious
22 orders, right?
23 A. I believe around that time
24 frame.

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1 Q. And --
2 MS. MILLER: Objection.
3 Sorry for the late objection.
4 BY MR. DeROCHE:
5 Q. That suspicious order
6 monitoring algorithm that was delivered
7 looked at essentially a six-month history
8 of what the store had ordered, did a
9 bunch of calculations, spit out a score,
10 that scored the order in terms of the
11 likelihood that it was suspicious. Is
12 that a fair summary of what that was
13 intended to do?
14 MS. MILLER: Objection.
15 THE WITNESS: I think it was
16 a part. But I'm not 100 percent
17 sure as far as the six-month
18 period goes.
19 BY MR. DeROCHE:
20 Q. Well, you understood that
21 the initial -- the original algorithm
22 that came looked at six months. Then it
23 was retuned. It moved to a 12-month
24 history. Are you aware of that?

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1 A. Yeah. Again, not -- not
2 aware of dates. And I think as I've
3 mentioned before I think --
4 Q. Sure?
5 A. -- there was an evolution of
6 the process.
7 Q. Right. And the evolution
8 was --
9 A. Changes made.
10 Q. Right. It was changed at
11 the time it was retuned. We looked at
12 the retunement document a little bit
13 earlier. It was moving from NDC or item,
14 looking then at active ingredient, and
15 moving from six months to 12 months?
16 MS. MILLER: Objection.
17 BY MR. DeROCHE:
18 Q. Those were the two major
19 changes when the retunement occurred,
20 right?
21 MS. MILLER: Objection.
22 THE WITNESS: I mean, there
23 were changes. I mean, those are a
24 couple of changes I can, you know,

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1 recall. I can't recall the exact
2 time frame. But that's safe to
3 say.
4 BY MR. DeROCHE:
5 Q. Safe to say. Okay. So if
6 we look at an IRR. And I know from
7 looking at the e-mail that we saw earlier
8 at one point when the IRR was turned off
9 for the rest of the country, two folks
10 continued to get the IRR, Mr. Mortelliti
11 and yourself. So I assume at that time,
12 you at least were receiving the IRR and
13 were familiar generally with the format.
14 MS. MILLER: Objection.
15 BY MR. DeROCHE:
16 Q. Correct?
17 MS. MILLER: Objection.
18 THE WITNESS: I may have
19 been receiving it, but I was -- I
20 was not involved in the day-to-day
21 review of the report.
22 BY MR. DeROCHE:
23 Q. We have some giant size
24 documents here. Don't blame me.

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1 (Document marked for
2 identification as Exhibit
3 CVS-Devlin-P-201.)
4 MR. DeROCHE: Counsel is
5 going to get hers in a minute.
6 It's poster size.
7 MS. MILLER: What's the
8 exhibit number?
9 MR. DeROCHE: 201.
10 MS. MILLER: 201?
11 MR. DeROCHE: Correct.
12 BY MR. DeROCHE:
13 Q. We've handed you what we've
14 now marked as Exhibit 201.
15 And this bears a CVS
16 production number of 100763. It appears
17 to be an IRR for 12/14/2010; is that
18 correct?
19 A. That's what's stated here,
20 yes.
21 Q. And it appears to be
22 directed to the Indianapolis distribution
23 center, correct?
24 A. That's what it states, yes.

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1 Q. Okay. Are you familiar with
2 a gentleman named Terrence Dugger?
3 A. Yes.
4 Q. Okay. And what was
5 Mr. Dugger?
6 A. He was a loss prevention
7 manager.
8 Q. At the Indianapolis DC?
9 A. At the time, yes.
10 Q. Okay. Now, if you look
11 at -- first of all, what's the report ID
12 number?
13 MS. MILLER: Objection.
14 BY MR. DeROCHE:
15 Q. Do you see that, on the
16 second page, 100764? Report ID.
17 A. What number?
18 Q. The report ID number.
19 Report ID designation. It's not just
20 numbers.
21 A. BIP006A. Okay.
22 Q. Are you familiar with the
23 report that bears that designation?
24 MS. MILLER: Objection.

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1 THE WITNESS: I do not have
2 the report numbers memorized, so I
3 can only take it for what the
4 document states.
5 BY MR. DeROCHE:
6 Q. Okay. Let's go to the third
7 page now that's a table on the third page
8 of Exhibit 201, page that bears 10765 as
9 the Bates number.
10 MS. MILLER: I think it's
11 100765.
12 MR. DeROCHE: 100765,
13 correct, yeah.
14 BY MR. DeROCHE:
15 Q. Do you know how to interpret
16 this table?
17 A. I wouldn't.
18 Q. Do you know what Mr. Dugger
19 was supposed to do with this report when
20 he received it?
21 MS. MILLER: Objection.
22 THE WITNESS: I'm not sure,
23 you know, as far as what time
24 frame this was.

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1 BY MR. DeROCHE:
2 Q. Well, the date is on it,
3 12/14/2010.
4 A. Right. Well, I'm not sure
5 as far as time frame and who, like who
6 was reviewing, who was not reviewing the
7 report.
8 Q. Well, if you remember
9 correctly the documents you looked at
10 earlier, I don't want to go back over
11 them, trust me. But I believe we
12 established during that prior testimony
13 that somewhere around September 2010, the
14 process was shifted to the individual DCs
15 from being reviewed centrally in New
16 Jersey.
17 MS. MILLER: Objection.
18 BY MR. DeROCHE:
19 Q. Do you recall that testimony
20 and the documents that established that?
21 MS. MILLER: Objection.
22 BY MR. DeROCHE:
23 Q. And I guess that would be
24 consistent with the notion that

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1 Mr. Dugger in Indianapolis is now getting
2 the IRR as of December 2010, correct?
3 MS. MILLER: Objection.
4 THE WITNESS: Again, I know
5 there were some changes and I know
6 even with the documents, I guess,
7 you know, I'm not sure exactly
8 when or -- I also know at this
9 time the pharmacy manager, and I'm
10 theorizing here, probably would
11 have received the report also.
12 The pharmacy manager had a role in
13 this.
14 BY MR. DeROCHE:
15 Q. Okay. Mr. Dugger may have
16 enlisted the pharmacy manager to do the
17 review for him?
18 MS. MILLER: Objection.
19 THE WITNESS: No. I'm
20 saying the pharmacy manager may
21 have been doing the review.
22 BY MR. DeROCHE:
23 Q. Okay. So even though it was
24 directed to Mr. Dugger, the pharmacy

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1 manager was the actual person at the DC
2 who would have handled the review of the
3 IRR?
4 MS. MILLER: Objection.
5 THE WITNESS: There was --
6 and again, I just, I just can't
7 recall the exact dates. There was
8 a period of time where the
9 pharmacy manager would have also
10 received the report.
11 So if -- I know you're
12 showing me a report that is sent
13 to Mr. Dugger. There's probably
14 another report out there, same
15 report, that probably would have
16 gone to the pharmacy manager.
17 BY MR. DeROCHE:
18 Q. So they would have printed
19 it twice at the DC?
20 A. They -- they would have.
21 Q. In terms of the coefficients
22 that are used, that are identified on
23 here, they are called model weight if you
24 look at the table?

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1 MS. MILLER: What page are
2 you on now?
3 MR. DeROCHE: Again, same
4 page. I haven't changed.
5 MS. MILLER: Oh. Apologies.
6 I changed.
7 BY MR. DeROCHE:
8 Q. Do you see that?
9 A. I see where it says model
10 weight, yes.
11 Q. Okay. And those are the
12 coefficients that were provided to CVS by
13 the outside vendor, the Buzzeeo related
14 firm?
15 A. I believe so.
16 Q. And when those coefficients
17 were provided, as you mentioned earlier,
18 they were developed through the use of
19 statisticians doing an analysis of data
20 that was provided to Buzzeeo by CVS?
21 MS. MILLER: Objection.
22 THE WITNESS: I -- I believe
23 that was a component of their
24 work.

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1 BY MR. DeROCHE:
2 Q. And you -- you mentioned
3 earlier, I think a number of times, that
4 you were happy to defer to the experts in
5 the field, referring to Buzzeeo, in terms
6 of the development of an algorithm that
7 would appropriately identify a --
8 potential suspicious orders?
9 A. I think I testified that I
10 did not present myself as a statistician.
11 Q. Mm-hmm. And you would defer
12 to Buzzeeo on that -- on that score?
13 MS. MILLER: Objection.
14 THE WITNESS: I -- I did not
15 put forth an algorithm.
16 BY MR. DeROCHE:
17 Q. Now, were you familiar with
18 the score, and you'll see a score
19 referenced, the last box on the page,
20 10 -- 100765.
21 MS. MILLER: Objection.
22 BY MR. DeROCHE:
23 Q. The score is the last -- the
24 last row.

<p style="text-align: right;">Page 434</p> <p>1 MS. MILLER: Objection. 2 Asked and answered. 3 BY MR. DeROCHE: 4 Q. Do you see -- do you see 5 that, sir? 6 MS. MILLER: Objection. 7 We've been through this multiple 8 times. 9 MR. DeROCHE: We haven't 10 been through this. Note your 11 continuing objection. We're not 12 going to agree on your 13 interpretation of what the subject 14 matter covered previously was. 15 We're talking about the same 16 lawsuit. That's probably as 17 broadly as you want to interpret 18 it. We'll note a continuing 19 objection to all my questions if 20 you want, but I'm going to 21 continue without interruption. 22 MS. MILLER: I'm just -- I 23 understand. I have a right to 24 object.</p>	<p style="text-align: right;">Page 436</p> <p>1 but that was a change that was made later 2 on. 3 Q. I'm not going to quibble 4 with you over the language. I can 5 understand that. But it says right in 6 there, currently a score of .15. 7 MS. MILLER: Objection. 8 BY MR. DeROCHE: 9 Q. And that was what was 10 recommended by Buzzeo, correct? 11 MS. MILLER: What -- where 12 are you -- I'm sorry, I'm not 13 saying .15 in the document. 14 MR. DeROCHE: All right. 15 Well, he read it into the record. 16 MS. MILLER: Oh, I see -- I 17 apologize. I see it now. 18 BY MR. DeROCHE: 19 Q. And the problem is on the -- 20 in that column it says model weight. 21 What's the score that's indicated there? 22 A. On the last column model 23 weight says 0.65. 24 Q. And at this point in time,</p>
<p style="text-align: right;">Page 435</p> <p>1 MR. DeROCHE: Good enough. 2 BY MR. DeROCHE: 3 Q. The row is -- last row. You 4 see the score there? 5 A. I see the last row. 6 Q. Okay. And it describes 7 essentially what the score is intended to 8 show. Do you see that? 9 A. Under description? 10 Q. Correct. Why don't you read 11 that into the record so the folks on the 12 jury can understand what we're talking 13 about. 14 A. Okay. So under score, it 15 says, "Score decides if an order is 16 suspicious or not. If it's" -- "if it's 17 greater than a threshold value, currently 18 0.15, the order is flagged as 19 suspicious." 20 As I think I've mentioned 21 before, as part of the evolution of the 22 program, I think the terminology that 23 we're -- we're using which, you know, 24 should have said potentially suspicious,</p>	<p style="text-align: right;">Page 437</p> <p>1 do you know if CVS was using .65 instead 2 of .15? 3 A. I would not know. 4 Q. Go to Page 100767. And 5 let's look at the last flagged store on 6 that page. Let me know when you're 7 there. 8 A. 767? 9 Q. Correct. 10 A. Okay. 11 Q. Are you there? 12 A. I am here. 13 Q. And first of all, this 14 appears to be a hydrocodone drug that is 15 being flagged here, correct? 16 A. I see the abbreviation of 17 that in the description, yes. 18 Q. Right. It's supposed to be 19 a 7.5-milligram dose of -- of 20 hydrocodone? 21 A. Yes. 22 Q. Okay. And according to the 23 SOP, someone at the DC, you say it may be 24 the pharmacy manager, is going to look at</p>

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1 this, and they are going to decide does
2 this require further review or is it
3 going to be blessed and shipped.
4 MS. MILLER: Objection.
5 BY MR. DeROCHE:
6 Q. Correct?
7 A. Yeah, again, just not -- not
8 recalling dates and times, but if there
9 was a concern, then it'd be, certainly,
10 you know --
11 Q. It would be escalated?
12 A. -- further -- further review
13 would take place.
14 Q. Escalated, I think it was
15 called in the SOP, or something like
16 that --
17 A. Yeah, escalated to involve,
18 perhaps consultation with people in the
19 field.
20 Q. Correct. There are a number
21 of things that could be done at that
22 point --
23 A. Sure.
24 Q. -- once it's escalated.

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1 And because it was
2 escalated, there would be documentation
3 of some type that would be retained so if
4 anybody asked later, in particular, maybe
5 the DEA, CVS could show, yes, we did our
6 duty and we looked at this order and we
7 escalated it and we did some due
8 diligence on this order to satisfy
9 ourselves that it's not suspicious,
10 correct?
11 MS. MILLER: Objection.
12 THE WITNESS: You know, I
13 can't recall the exact process,
14 but I -- I know there was -- you
15 know, there was a review process.
16 BY MR. DeROCHE:
17 Q. Retention of two years, I
18 believe was said?
19 A. Yes. Yes.
20 Q. So it'd be somehow attached
21 or noted. And even it could be even
22 noted by hand on the IRR itself --
23 A. Yes, yes.
24 MS. MILLER: Just, wait --

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1 BY MR. DeROCHE:
2 Q. -- correct? You've seen
3 that?
4 MS. MILLER: -- and give him
5 a -- give him a chance to finish
6 his question before you answer,
7 please.
8 BY MR. DeROCHE:
9 Q. I saw hundreds of IRRs, some
10 of them had handwritten notes. And
11 you've seen that too, I assume --
12 MS. MILLER: Objection.
13 BY MR. DeROCHE:
14 Q. -- where the analyst who
15 actually did the escalated review wrote
16 down what they -- what they looked at.
17 That's not unusual, right?
18 MS. MILLER: Objection.
19 THE WITNESS: I can't -- I
20 can't recall a particular
21 circumstance, but I know there was
22 a file kept.
23 BY MR. DeROCHE:
24 Q. Correct.

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1 MS. MILLER: Jim, can we
2 take a break?
3 BY MR. DeROCHE:
4 Q. So if they're --
5 MR. DeROCHE: Actually, let
6 me finish with this exhibit, then
7 we can take a break.
8 MS. MILLER: We've been
9 going for -- that would be great.
10 MR. DeROCHE: All right.
11 Let me -- let me finish with this
12 one, then we'll -- we'll --
13 hopefully I'll not have too long.
14 BY MR. DeROCHE:
15 Q. All right. So pharmacy
16 manager or someone at the distribution
17 center would have looked at this IRR and
18 selected the flags for escalation, and
19 those flagged and escalated orders would
20 have some documentation showing that they
21 were looked at and deemed not
22 suspicious --
23 MS. MILLER: Objection.
24 BY MR. DeROCHE:

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1 Q. -- correct?

2 A. I can't recall on the

3 suspicious versus non-suspicious or

4 potentially suspicious.

5 Q. I understand that all of

6 these, according to the algorithm, have

7 already been flagged as potentially

8 suspicious, correct? Yes?

9 A. They would be potentially,

10 yes.

11 Q. Yes. And then some of them

12 continued to be considered potentially

13 suspicious and worthy of an escalated

14 review, correct?

15 MS. MILLER: Objection.

16 THE WITNESS: Yeah, I guess

17 in some circumstances, but, again,

18 each situation -- each situation

19 would sit on its own.

20 BY MR. DeROCHE:

21 Q. Well, I understand that --

22 A. Right.

23 Q. -- but we're talking about

24 what happens with this report right now.

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1 And what happens with this report is

2 someone looks at it. It's not ignored.

3 And then a certain subset of what is on

4 the report gets chosen, selected, for

5 escalation for additional review,

6 correct?

7 MS. MILLER: Objection.

8 THE WITNESS: Further --

9 further questions asked perhaps.

10 BY MR. DeROCHE:

11 Q. Yes. Okay. And the ones

12 that aren't selected for additional

13 review are approved and shipped?

14 MS. MILLER: Objection.

15 THE WITNESS: They would --

16 they would all -- you know, to my

17 knowledge, they would all be --

18 they would all be reviewed.

19 I mean, there wouldn't be

20 just some arbitrarily not

21 reviewed. There would be some,

22 you know, initial review process.

23 I'm sure there are varying degrees

24 of that review process.

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1 BY MR. DeROCHE:

2 Q. Well, that's what I'm trying

3 to get at because, I mean, the escalated

4 review I understand. Now, beyond simply

5 looking at the IRR report and saying that

6 looks fine, that's what an escalated

7 review is that is documented. When

8 something beyond just the IRR is looked

9 at, that's considered escalated review

10 from the IRR, correct?

11 MS. MILLER: Objection.

12 THE WITNESS: I can't -- you

13 know, trying to look back and

14 think of the particulars, I mean,

15 I just -- I can't fully recall the

16 particulars of the terminology

17 that we were using at the time.

18 BY MR. DeROCHE:

19 Q. Okay.

20 A. Now, I know -- I know, you

21 know, the IRR was being reviewed.

22 Whether it was centrally or individual

23 distribution center, and I know there

24 were instructions as far as maintaining

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1 files, you know, for a period of time. I

2 know that was taking place.

3 Q. Okay. If there's no

4 documentation for -- for instance, let's

5 stick with 100767, the last entry, right,

6 and there's no indication anywhere on the

7 IRR itself or in any file that there was

8 any further review other than looking at

9 what's on the IRR.

10 So from looking at the IRR

11 itself, how could someone determine

12 whether or not this is a suspicious order

13 that needs to be reported to the DEA in

14 compliance with the DEA regulations?

15 MS. MILLER: Objection.

16 THE WITNESS: Just because

17 it's appearing in this report,

18 that doesn't automatically say

19 that it has reported to the DEA.

20 BY MR. DeROCHE:

21 Q. Again, you've got to listen

22 to my question, sir. I'm sorry. Maybe I

23 was unclear.

24 From looking at what's on

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1 this report --
2 A. Yes.
3 Q. -- how can someone determine
4 whether or not this is an actual
5 suspicious order as opposed to a
6 potential suspicious order?
7 MS. MILLER: Objection.
8 THE WITNESS: It's been --
9 it's been a few years since I've
10 seen this report. And I just -- I
11 don't recall the process as far as
12 interpreting the numbers and how
13 that would take place, so I
14 can't -- you know, I don't feel
15 confident in commenting on it.
16 BY MR. DeROCHE:
17 Q. Okay. The SOP that you
18 looked at earlier, which was issued by
19 your department to guide the use of this
20 report, said, among other things, that
21 the month-to-date number should be
22 observed in relation to the lags that
23 also appeared on the report.
24 Do you recall that?

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1 MS. MILLER: Objection.
2 BY MR. DeROCHE:
3 Q. Reading that earlier?
4 MS. MILLER: If you want to
5 show him the document --
6 MR. DeROCHE: No, I don't
7 want to -- I'm just going to ask
8 him -- I'm not --
9 THE WITNESS: Can I take a
10 break? I have to go to the
11 bathroom.
12 BY MR. DeROCHE:
13 Q. Not with a question pending.
14 When we're done with this question, then
15 we can go on to a break. All right.
16 So --
17 A. I can't take a break?
18 Q. Not with a question pending.
19 We'll take a break in a moment.
20 A. What document am I looking
21 at?
22 Q. You know what? I'll
23 withdraw the question, and you can go
24 take a break.

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1 A. Thank you.
2 THE VIDEOGRAPHER: Going off
3 the record. The time is 4:44.
4 (Short break.)
5 THE VIDEOGRAPHER: Going
6 back on record. Beginning of
7 Media File 11. The time is
8 5:00 p.m.
9 BY MR. DeROCHE:
10 Q. Okay, sir. So we were going
11 through Exhibit 201, and we were looking
12 at the IRR, in particular with respect to
13 one of the orders. And I guess what I'm
14 trying to figure out is, someone needed,
15 on the first pass to the side, whether or
16 not the orders on this IRR were worthy of
17 additional escalated review. And
18 according to the SOP, they were directed
19 to look at the month to date and then
20 also look at the lags, and see if there
21 was a problem with the amount in relation
22 to the lags and the pattern of ordering
23 and so forth. So that's where we are on
24 this document.

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1 Then it looks -- if you look
2 at the -- back at the first page, if you
3 flip back and just keep where you are,
4 first page. That's fine. No, the very
5 first page, top page. You'll see that
6 this actually is one of the signed IRRs,
7 correct, someone signed this thing and
8 dated it?
9 MS. MILLER: Objection to
10 the preamble of the question.
11 BY MR. DeROCHE:
12 Q. Correct?
13 A. There does appear to be a
14 signature on this document.
15 Q. Can you tell who that is?
16 A. No.
17 Q. Okay. Certainly it doesn't
18 look like Terrence Dugger, so maybe you
19 were correct that the Rx manager was the
20 one who was actually doing this review at
21 this point in time?
22 A. Yeah, I'm not -- I'm not a
23 handwriting expert.
24 Q. Sure.

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1 A. But that's --
2 Q. It doesn't look like
3 Terrence Dugger to me. How about to you?
4 MS. MILLER: Objection.
5 THE WITNESS: Yeah, I --
6 BY MR. DeROCHE:
7 Q. In any event someone --
8 A. Again, I don't -- I don't
9 know.
10 Q. -- someone signed this as an
11 indication as they were directed to do in
12 the SOP that this had been reviewed. So
13 if anybody questioned later, there was
14 proof that it actually had been looked
15 at, correct?
16 MS. MILLER: Objection. To
17 the extent you're referencing the
18 SOP --
19 BY MR. DeROCHE:
20 Q. Correct?
21 MS. MILLER: -- if you want
22 to show it to him so he can review
23 it --
24 MR. DeROCHE: Noted.

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1 MS. MILLER: -- it would be
2 helpful.
3 MR. DeROCHE: Noted
4 objection. Just objection to form
5 only, please.
6 THE WITNESS: And I guess,
7 you know, with the, you know -- I
8 know I'm being repetitive, but the
9 evolution of a process --
10 BY MR. DeROCHE:
11 Q. I understand.
12 A. -- the dates of the process,
13 the -- the SOP, the draft version, the
14 evolution --
15 Q. I understand, sir.
16 A. -- of the SOP. I just -- I
17 can't specifically say that at this date,
18 and this time, you know, this version of
19 the SOP was in place.
20 Q. Fair enough. And I'm not
21 going to hold you to it.
22 A. Okay.
23 Q. I'm just suggesting that
24 someone signed this one appropriately

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1 indicating it was reviewed, correct?
2 MS. MILLER: Objection.
3 BY MR. DeROCHE:
4 Q. You can answer.
5 A. Yeah, there -- there appears
6 to be a signature dated 12/14/2010 on
7 this IRR document.
8 Q. Going back to 100767, and
9 again, these are number of flagged orders
10 on this page in relation to the
11 Indianapolis DC that have been reviewed.
12 And there's no indication, at least with
13 any handwriting on this report itself,
14 that there was any escalated review for
15 any of these orders, correct?
16 A. I just see the report.
17 There are also could have been a separate
18 file that would have had that information
19 in it. I just don't know.
20 Q. Okay. Well, with respect to
21 the reports, at least the ones -- and
22 I've looked at hundreds of them in New
23 York City at one point, when there was
24 some additional documentation, it was

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1 actually stuck into the IRR, you know,
2 right after the page that it related to,
3 there was actually a report put in there
4 and retained in the accordion file IRR.
5 Are you familiar with that,
6 sir?
7 MS. MILLER: Objection to --
8 BY MR. DeROCHE:
9 Q. -- in terms of receiving --
10 MS. MILLER: -- the
11 testimony by counsel.
12 THE WITNESS: I can't -- I
13 can't recall the process. I know
14 we had -- there were separate
15 files. And each DC would be
16 responsible for having a file
17 around the IRR.
18 BY MR. DeROCHE:
19 Q. Okay.
20 A. I don't recall if they
21 included the IRR or the investigation. I
22 just can't recall.
23 Q. Got it. Now, in terms of
24 actually looking at this report in

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1 deciding whether or not to escalate these
2 orders, how many lags do you see that
3 were available for the hydrocodone order
4 on the last order listed on Page 100767?
5 MS. MILLER: Objection.
6 THE WITNESS: How many lags?
7 BY MR. DeROCHE:
8 Q. Yeah. How many lags are
9 there?
10 A. Are you looking at the
11 bottom line?
12 Q. Correct.
13 A. Just in reading the report,
14 it states month-to-date 500. Lag 1, 200;
15 Lag 2, 200; Lag 3, zero; 4, zero; 5,
16 zero; 6, zero.
17 Q. If you go to the next page,
18 which is 100768. You'll see there's a
19 hydrocodone order, third order down.
20 Do you see that, sir?
21 A. That's Store 3362?
22 Q. Correct.
23 A. I see that.
24 Q. You see their month-to-date

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1 is 2,000 doses, correct?
2 A. I see month to date 2,000.
3 Q. Okay.
4 A. I don't recall if that means
5 doses or not. I don't recall that.
6 Q. Well, at this time this
7 relates to a particular drug, correct?
8 A. It is under hydrocodone,
9 yes.
10 Q. Right. So it is relating to
11 an item as opposed to an active
12 ingredient, correct?
13 MS. MILLER: Objection.
14 THE WITNESS: It -- I can't
15 recall the IRR report as far as
16 when it was item versus when it
17 was active ingredient.
18 BY MR. DeROCHE:
19 Q. You can tell by looking at
20 it, can't you?
21 A. Oh, I can see that it says
22 hydrocodone. But I don't know --
23 Q. Well, it's listed NDC,
24 correct?

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1 A. I don't know when it went to
2 active ingredient if it would still list
3 the items on top of that. I'm just not
4 sure. I just can't recall.
5 Q. Do you know if this is, as
6 of December 14, 2010, if you were still
7 using active ingredient versus --
8 MS. MILLER: Objection.
9 THE WITNESS: I don't recall
10 the dates. I'd have to -- I don't
11 recall the dates off the top of my
12 head. I know we made a change.
13 BY MR. DeROCHE:
14 Q. Right.
15 A. I just don't recall exactly
16 when the change took place.
17 Q. Well, the change was done
18 were the retunement document, correct,
19 that we looked at earlier?
20 MS. MILLER: Objection.
21 BY MR. DeROCHE:
22 Q. It was delivered in February
23 of 2011 and then sometime thereafter
24 implemented?

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1 A. Which --
2 Q. So that would indicate --
3 I'll show you what we previously marked
4 as 150. That's an e-mail. And then the
5 retunement document is attached. It was
6 delivered in February of 2011.
7 A. Okay.
8 MS. MILLER: Objection.
9 BY MR. DeROCHE:
10 Q. So as of December 2010,
11 we're still on item as opposed to active
12 ingredient?
13 MS. MILLER: Objection.
14 BY MR. DeROCHE:
15 Q. Right?
16 MS. MILLER: Asked and
17 answered.
18 BY MR. DeROCHE:
19 Q. Correct?
20 A. Again, not being able to
21 recall the dates and just going off the
22 report.
23 Q. Well, you don't -- you have
24 to recall the date when you have it in

<p style="text-align: right;">Page 458</p> <p>1 your hand right in front of you, sir? Or 2 are you trying to -- 3 A. No. 4 Q. -- skate around the 5 question? 6 A. No. 7 MS. MILLER: Objection. 8 BY MR. DeROCHE: 9 Q. So I think we need 10 forthright questions here. 11 A. I'm not -- 12 Q. So skating -- 13 A. I'm just -- I'm looking at 14 the document that you provided, and I do 15 see that on February 9, 2011, it's titled 16 "Retunement." 17 Q. Right. 18 A. I don't recall this 19 document. And I just can't -- 20 Q. Can you use logic, sir, and 21 determine that if something is delivered 22 to you on February -- in February of 23 2011, that moved from using item to 24 active ingredient, that as of</p>	<p style="text-align: right;">Page 460</p> <p>1 BY MR. DeROCHE: 2 Q. All right. 3 A. I'm just trying to recall 4 the dates, and I don't know, could a 5 change have been made before this 6 document came into place? I just don't 7 recall that. That's -- I'm not trying to 8 skate. I'm just -- that's how I'm 9 looking at it. 10 Q. Okay. So you got the 11 retunement document. You moved from 12 using six months of lag to 12 months of 13 lag as well, correct? You're looking 14 there. You've got the retunement 15 document right in front of you. Go ahead 16 and look through it. 17 A. Okay. I do see the line at 18 12 months worth of data. 19 Q. And going back to using 20 logic for just a moment, the IRR that you 21 have in front of you, 201, has six months 22 of lag, right? 23 MS. MILLER: Objection. 24 THE WITNESS: The document</p>
<p style="text-align: right;">Page 459</p> <p>1 December 2010, earlier in time, you were 2 still using item instead of active 3 ingredient? Can we use logic and come to 4 that conclusion for the jury so that we 5 don't have to dance anymore? 6 MS. MILLER: Objection. 7 THE WITNESS: I think from 8 a -- 9 BY MR. DeROCHE: 10 Q. Tell the jury if you can 11 answer that question, sir. 12 A. From a -- 13 Q. They're looking right now. 14 MS. MILLER: Objection. 15 THE WITNESS: From a -- 16 BY MR. DeROCHE: 17 Q. Go ahead. Can you use logic 18 and come to that conclusion so we can 19 stop dancing and answer questions and 20 move on? 21 MS. MILLER: Objection. 22 THE WITNESS: From a logical 23 standpoint, the documents in front 24 of me, I hear what you're saying.</p>	<p style="text-align: right;">Page 461</p> <p>1 does have -- indicating six lags, 2 yes. 3 BY MR. DeROCHE: 4 Q. And we went through this 5 earlier when Mr. Mortelliti was talking 6 about how the data was missing because 7 you were using the item versus the active 8 ingredient. And, therefore, you started 9 having IRRs with lags that were noted as 10 zero. 11 And confirm for me, sir, how 12 many lags are zero on Page 100768 with 13 respect to the hydrocodone order 14 referenced there? 15 MS. MILLER: Objection. 16 THE WITNESS: In regards to 17 Store 3362? 18 BY MR. DeROCHE: 19 Q. Correct, sir. It's the only 20 one that's there in hydrocodone. 21 A. Okay. 22 MS. MILLER: Objection. 23 BY MR. DeROCHE: 24 Q. Go ahead.</p>

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1 A. I see, according to this, I
2 have month-to-date at 2,000. Lag 1, 500;
3 Lag 2, 500. And then I see Lag 3, Lag 4,
4 Lag 5, Lag 6 on this report noted as
5 zero.
6 Q. Right. Now, do you know if
7 that was there were no orders for that
8 drug for that month for that store or
9 because this is a situation where
10 Mr. Mortelliti was crying wolf about
11 that -- where the actual history was
12 missing?
13 MS. MILLER: Objection.
14 THE WITNESS: I wouldn't
15 know on this particular store.
16 BY MR. DeROCHE:
17 Q. Okay. This store, as of
18 12/14/2010 has a month-to-date of 2,000.
19 And it shows the first lag is 500, and
20 the second lag is 500. And zeros up to
21 that point.
22 Would you consider a 2,000
23 order month-to-date to be unusual for the
24 store or not?

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1 MS. MILLER: Objection.
2 THE WITNESS: I just -- I
3 can't recall the parameters being
4 used as far as interpreting the
5 report.
6 BY MR. DeROCHE:
7 Q. Someone looking at this
8 report is going to have to make some
9 determinations based on what's on here.
10 Do you know what that
11 determination would have been at that
12 point?
13 MS. MILLER: Objection.
14 THE WITNESS: Again, I
15 just -- I don't recall the
16 interpretation of the report.
17 BY MR. DeROCHE:
18 Q. The next page, 100769, again
19 there's only one hydrocodone order on
20 here for Store 4636. And it shows a
21 month-to-date of 400, the first three
22 lags are 100 each. And then zeros for 4,
23 5, and 6, correct?
24 A. That's what the report

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1 states, yes.
2 Q. Should this have been
3 cleared or should this have been reviewed
4 further?
5 MS. MILLER: Objection.
6 THE WITNESS: Again, I don't
7 recall what parameters in
8 interpreting the report.
9 BY MR. DeROCHE:
10 Q. It's got a score of .88,
11 correct, on this order?
12 A. It states .88, yes.
13 Q. Okay. And the scoring
14 system was between zero and one, correct?
15 MS. MILLER: Objection.
16 THE WITNESS: I'd have to
17 look into that. I don't recall.
18 BY MR. DeROCHE:
19 Q. Do you know if the scoring
20 system changed in terms of the range
21 between the original algorithm and the
22 retuned algorithm?
23 MS. MILLER: Objection.
24 THE WITNESS: I know during

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1 the period of time I was employed
2 with CVS, I know that the
3 algorithm did change. As far as
4 the particulars on the score and
5 the lags, I just don't recall
6 those details.
7 BY MR. DeROCHE:
8 Q. You don't know if the
9 potential score was between zero and one
10 for the original algorithm?
11 A. I don't remember.
12 MS. MILLER: Objection.
13 BY MR. DeROCHE:
14 Q. Do you know if this order
15 was cleared from looking at this document
16 that we have in front of us, or was there
17 an additional review done?
18 A. I wouldn't know that.
19 Q. Okay. We're going to look
20 quickly at Exhibit 56. And I believe you
21 have it over there already.
22 MS. MILLER: Is that one we
23 have?
24 BY MR. DeROCHE:

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1 Q. If you can find 56. It's an
2 August 13, 2010 memo from Mr. Mortelliti
3 to yourself.
4 Are you there? Do you have
5 it in front of you?
6 A. Yes.
7 Q. So this is talking about
8 moving the score from .15 to .65. And it
9 appears that that was -- determination
10 was made based on some testing that was
11 done by Mr. Mortelliti; is that correct?
12 MS. MILLER: Objection.
13 THE WITNESS: If you just
14 give me one moment to read through
15 this quickly.
16 BY MR. DeROCHE:
17 Q. Sure.
18 A. Yes, it does --
19 Q. Okay.
20 A. It does speak to changing
21 the score.
22 Q. Right. It wasn't done -- it
23 appears -- it wasn't done in a haphazard
24 manner, but actually was subject to some

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1 testing?
2 MS. MILLER: Objection.
3 THE WITNESS: Based -- again
4 I don't recall the memo. But in
5 reading the memo, it does state
6 that there was testing done. Yes,
7 it wasn't just arbitrarily
8 changed.
9 BY MR. DeROCHE:
10 Q. Sure. Sure. I understand
11 that.
12 And that August 13, 2010
13 memo was again consistent with the idea
14 that as of December of 2010, looking at
15 Exhibit 201, the score apparently is now
16 .65 for purposes of flagging orders, 201
17 we just looked at?
18 A. Looking at the report, when
19 you look at the table it actually says
20 currently .15 on it.
21 Q. But then under the model
22 weight column it says .65.
23 A. Right. So I -- again, I
24 haven't seen this report in quite some

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1 time. But, you know, perhaps that
2 language wasn't updated. I -- I don't
3 know.
4 Q. Sure.
5 A. But the model weight does
6 say .65.
7 Q. Okay. And then subsequent
8 to this report, again a retunement was
9 done, we looked at that retunement
10 document a moment ago. And the
11 retunement involved really a brand-new
12 algorithm, for -- for all intents and
13 purposes, in terms of, you know, it
14 was -- it was a substantial change in the
15 algorithm for purposes of flagging
16 orders.
17 MS. MILLER: Objection.
18 BY MR. DeROCHE:
19 Q. You would agree with that,
20 correct?
21 MS. MILLER: Objection.
22 THE WITNESS: Yeah, I -- I
23 don't know if I would say it was a
24 brand-new algorithm. I think

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1 it -- I thought the -- was just
2 what I can recall. I thought the
3 algorithm itself, you know, stayed
4 somewhat steady, that some of the
5 numbers within the algorithm would
6 have changed. That's just all I
7 can recall.
8 BY MR. DeROCHE:
9 Q. One of the coefficients, the
10 types of coefficients, the calculation of
11 coefficients, all were changed
12 substantially when the retunement was
13 done. Isn't that correct?
14 MS. MILLER: Objection.
15 THE WITNESS: I can't -- I
16 can't recall all the things that
17 were changed in it.
18 BY MR. DeROCHE:
19 Q. Let me show you what we've
20 marked as Exhibit 200.
21 (Document marked for
22 identification as Exhibit
23 CVS-Devlin-P-200.)
24 BY MR. DeROCHE:

<p style="text-align: right;">Page 470</p> <p>1 Q. This is an IRR, it looks 2 like it was directed to Knoxville on 3 8/31/2012. 4 And if you'd flip open the 5 table, which is on the second page of 6 this document, sir? 7 A. Yes. 8 Q. And if you flip open the 9 table for the Exhibit 201 that you just 10 looked at, and have them side by side, if 11 you would. 12 A. Okay. 13 Q. And if you look at these two 14 tables that kind of reflect the 15 algorithms, what the attributes are, 16 you'll see that there are substantial 17 differences, correct, between the 18 attributes on the old algorithm versus 19 the attributes on the retuned algorithm? 20 MS. MILLER: Objection. 21 BY MR. DeROCHE: 22 Q. Agreed? 23 MS. MILLER: Objection. 24 THE WITNESS: Are you</p>	<p style="text-align: right;">Page 472</p> <p>1 coefficients that are used. 2 MS. MILLER: Objection. 3 BY MR. DeROCHE: 4 Q. Not to mention adding an 5 additional six months of data? 6 MS. MILLER: Objection. 7 Do you need time to read the 8 document? 9 BY MR. DeROCHE: 10 Q. Correct? You can answer. 11 A. Can I just take a little 12 moment here to compare? 13 Again, just in the essence 14 of time, I -- you know, I do notice that 15 there are some, you know, different 16 languages or attributes used. I do see 17 some similarities. 18 Again, I would -- I would 19 defer to the statisticians as far as what 20 the actual differences are, as far as one 21 algorithm versus the other algorithm. 22 Q. Sure. And obviously the 23 coefficients are not the same as well, 24 correct?</p>
<p style="text-align: right;">Page 471</p> <p>1 looking at the model weight 2 column? 3 BY MR. DeROCHE: 4 Q. Sorry, what's that? 5 A. Is this the model weight 6 column? 7 Q. Oh, we can look -- no, look 8 at the attribute itself. Zscore6range is 9 the top attribute, right, for the retuned 10 model? 11 A. Yes. 12 Q. Then you have PZscorerange. 13 A. Okay. 14 Q. Right? Then you have 15 Zscore12range? 16 A. Yes. 17 Q. And you have a pairing of 18 each of those with, I think an additional 19 coefficient. And then as you go down, 20 there -- it looks like there's very 21 little consistency between the old 22 algorithm and the new algorithm. The new 23 algorithm is really a substantial change 24 from the old algorithm in terms of</p>	<p style="text-align: right;">Page 473</p> <p>1 MS. MILLER: Objection. 2 BY MR. DeROCHE: 3 Q. I mean the -- the model 4 weight, excuse me -- 5 A. The model weight -- 6 Q. Yeah, the model weight 7 coefficients, for the coefficients. 8 MS. MILLER: Objection. 9 THE WITNESS: It's -- yeah, 10 can see it was -- on the score, 11 that's similar. Some slight 12 changes. 13 And again, I'd probably want 14 an hour to go through this 15 properly and identify the exact 16 changes between each but -- 17 BY MR. DeROCHE: 18 Q. The coefficients aren't the 19 same, correct? 20 MS. MILLER: Objection. 21 THE WITNESS: Well, I do 22 notice the model, the model as far 23 as when you say coefficient model 24 weight. That's the column you're</p>

<p style="text-align: right;">Page 474</p> <p>1 looking at?</p> <p>2 BY MR. DeROCHE:</p> <p>3 Q. The score you mean?</p> <p>4 A. Right.</p> <p>5 Q. Well, I understand, but</p> <p>6 we'll get to that in a moment.</p> <p>7 A. Right.</p> <p>8 Q. But leaving aside the .65 at</p> <p>9 the bottom, the coefficients bear no</p> <p>10 resemblance to each other?</p> <p>11 MS. MILLER: Objection.</p> <p>12 BY MR. DeROCHE:</p> <p>13 Q. Correct?</p> <p>14 A. Yeah, they're -- they're</p> <p>15 different numbers on the document, yes.</p> <p>16 Q. Okay. And again, the</p> <p>17 retunement document was delivered and</p> <p>18 then implemented by CVS based on the</p> <p>19 statisticians' analysis and design of the</p> <p>20 algorithm, correct?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: They -- they</p> <p>23 certainly played a big role in --</p> <p>24 in the changes, yes.</p>	<p style="text-align: right;">Page 476</p> <p>1 Q. What's that? Can you hand</p> <p>2 me that? It's 150, I believe.</p> <p>3 Exhibit 150.</p> <p>4 MS. MILLER: Do you have</p> <p>5 that?</p> <p>6 BY MR. DeROCHE:</p> <p>7 Q. Yeah, there we go. I'm</p> <p>8 going to hand you Exhibit 150. And we're</p> <p>9 going to look at Page 114652. You'll see</p> <p>10 at the end, that's the coefficients that</p> <p>11 were provided with the retunement.</p> <p>12 Do you see that, sir?</p> <p>13 A. I do see that, yes.</p> <p>14 Q. If you look at the second</p> <p>15 coefficient down, labeled B-1.</p> <p>16 Do you see that, sir?</p> <p>17 A. I do see it.</p> <p>18 Q. 1.0450. Okay. And if you</p> <p>19 look at the top.</p> <p>20 A. 1.045.</p> <p>21 Q. 45, right. Note a zero at</p> <p>22 the end too.</p> <p>23 But if you go to the</p> <p>24 Exhibit 200, the table that we were just</p>
<p style="text-align: right;">Page 475</p> <p>1 BY MR. DeROCHE:</p> <p>2 Q. Okay. And they delivered a</p> <p>3 document to you, addressed to you,</p> <p>4 telling you, this is the new algorithm we</p> <p>5 recommend, scoring system, and so forth,</p> <p>6 including giving you these actual</p> <p>7 coefficients that are being used,</p> <p>8 correct?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: Based on</p> <p>11 the -- based on the documents I've</p> <p>12 seen, it's -- it's not a change</p> <p>13 that I would have implemented, but</p> <p>14 probably would have worked with</p> <p>15 the DIT group to --</p> <p>16 BY MR. DeROCHE:</p> <p>17 Q. Right.</p> <p>18 A. -- have that, put that in</p> <p>19 place.</p> <p>20 Q. Fair enough. Go back to the</p> <p>21 retunement document.</p> <p>22 MS. MILLER: What number is</p> <p>23 that, please?</p> <p>24 BY MR. DeROCHE:</p>	<p style="text-align: right;">Page 477</p> <p>1 looking at, the first model weight is</p> <p>2 consistent with that number, correct?</p> <p>3 A. The model weight of 1.045</p> <p>4 does match up to 1.045. It's just an</p> <p>5 extra zero.</p> <p>6 MR. DeROCHE: Leave the</p> <p>7 retunement table up.</p> <p>8 BY MR. DeROCHE:</p> <p>9 Q. If you go to the second</p> <p>10 number, second coefficient that's</p> <p>11 referenced in the retunement document,</p> <p>12 0.4589. If you go to the IRR, that</p> <p>13 coefficient matches up, correct?</p> <p>14 A. You see the B-2 in this</p> <p>15 retunement document is .4589. And in the</p> <p>16 IRR, I also see .589.</p> <p>17 Q. Great. Next one down,</p> <p>18 again, consistent. 1.0889. Recommended</p> <p>19 by the statisticians, used by CVS, right?</p> <p>20 MS. MILLER: Objection.</p> <p>21 THE WITNESS: The numbers</p> <p>22 correlate, yes.</p> <p>23 BY MR. DeROCHE:</p> <p>24 Q. Okay. Next number down,</p>

<p style="text-align: right;">Page 478</p> <p>1 does that correlate as well?</p> <p>2 A. Well --</p> <p>3 Q. They are out of order.</p> <p>4 A. They're out of order.</p> <p>5 Q. I understand. But they're</p> <p>6 the same --</p> <p>7 A. Okay.</p> <p>8 Q. -- correct?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: I see on one</p> <p>11 document 1.2615, and I see on the</p> <p>12 other document 1.2615.</p> <p>13 BY MR. DeROCHE:</p> <p>14 Q. Okay. And you see 2.51 --</p> <p>15 54, excuse me 21, correct?</p> <p>16 A. I do see that. Yes.</p> <p>17 Q. And then .75 is on the</p> <p>18 retunement document as well as the IRR,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And then .5, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. These appear to be</p> <p>24 the retuned coefficients that are</p>	<p style="text-align: right;">Page 480</p> <p>1 MS. MILLER: Previous page</p> <p>2 of Exhibit 150?</p> <p>3 MR. DeROCHE: Of</p> <p>4 Exhibit 150.</p> <p>5 THE WITNESS: I mean, I see</p> <p>6 a B-0 on here. But as far as</p> <p>7 interpreting what all this means,</p> <p>8 I have no idea.</p> <p>9 BY MR. DeROCHE:</p> <p>10 Q. Now, when the retuned</p> <p>11 document -- retuned algorithm was</p> <p>12 provided by Buzzeo to CVS, the experts at</p> <p>13 Buzzeo recommended a .15 score as being</p> <p>14 the indicator of a potentially suspicious</p> <p>15 order, correct?</p> <p>16 MS. MILLER: Objection.</p> <p>17 THE WITNESS: I don't recall</p> <p>18 that.</p> <p>19 BY MR. DeROCHE:</p> <p>20 Q. If you look at the document</p> <p>21 sir, go to the -- go to the retuned</p> <p>22 document. You'll see it's underlined.</p> <p>23 So it won't be hard to find. There is an</p> <p>24 underlined sentence. What do they say?</p>
<p style="text-align: right;">Page 479</p> <p>1 provided that are now being used in the</p> <p>2 IRR by CVS, correct?</p> <p>3 MS. MILLER: Objection. You</p> <p>4 mean in the IRR that is</p> <p>5 Exhibit 200?</p> <p>6 MR. DeROCHE: Correct.</p> <p>7 BY MR. DeROCHE:</p> <p>8 Q. That's what we've been</p> <p>9 talking about for the last ten minutes.</p> <p>10 I don't think anybody is confused.</p> <p>11 A. I just -- I don't see the --</p> <p>12 I see a lot of those similarities, but I</p> <p>13 also see a model coefficient on the</p> <p>14 retunement document that I do not see on</p> <p>15 the IRR, for the 5.9745.</p> <p>16 Q. On the retuned document</p> <p>17 table, what does that refer to, B-0?</p> <p>18 A. B-0.</p> <p>19 Q. Right. And B-0, you</p> <p>20 recognize as a constant, right?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. DeROCHE:</p> <p>23 Q. You recognize that. If you</p> <p>24 look at the previous page, you'll see it.</p>	<p style="text-align: right;">Page 481</p> <p>1 Read it for us.</p> <p>2 MS. MILLER: Objection.</p> <p>3 It's not clear this refers to the</p> <p>4 retuned.</p> <p>5 BY MR. DeROCHE:</p> <p>6 Q. Sir?</p> <p>7 A. Are you -- you're referring</p> <p>8 to 4644 Bates number?</p> <p>9 Q. Yes.</p> <p>10 A. So on this -- on this -- on</p> <p>11 this document with Bates number 4644, the</p> <p>12 underlined sentence states, "The model</p> <p>13 has been designed so that any order with</p> <p>14 a score of .15 or higher is identified as</p> <p>15 suspicious, pended, and should be</p> <p>16 investigated further."</p> <p>17 Q. Now --</p> <p>18 A. I don't know if -- I see</p> <p>19 this in the document. And I just -- you</p> <p>20 know, I can't recall if there are other</p> <p>21 documents that would have changed this,</p> <p>22 or there were conversations that, again,</p> <p>23 as this process evolved and changes were</p> <p>24 made -- I can't recall if every single</p>

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1 change, if there's a paper trail document
2 to go with it. I just -- I don't know
3 that.
4 Q. Well, sir, I understand.
5 We've seen a paper trail of documents
6 related to the old algorithm and
7 Mr. Mortelliti doing some testing to
8 determine that .15 wouldn't be used but
9 .65 would be used instead. And that
10 appears to have been carried forward.
11 What I'm asking you is, have
12 you ever seen a document that shows that
13 any testing was done with the retuned new
14 algorithm to determine whether or not .65
15 was more appropriate than .15?
16 MS. MILLER: Objection.
17 BY MR. DeROCHE:
18 Q. You can answer.
19 A. I just -- I don't recall
20 that.
21 Q. Okay. And you were there in
22 2012, at least as of October, correct?
23 A. Around mid-October.
24 Q. Sure.

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1 A. I believe I gave my notice
2 probably at the beginning of October.
3 Q. Again, I wish I had the
4 retunement document in front of me.
5 We're going to waste our last ten minutes
6 going through this. No, the retuned
7 document I'll take a look at.
8 A. This one.
9 Q. There we go. It might be
10 faster if I take a look at this.
11 Moving on to 200 again. If
12 you go to the second -- first page,
13 rather, right behind the table we just
14 reviewed. I apologize. My Bates stamp
15 number is cut off on my copy.
16 A. Looks like 99, maybe.
17 Q. Page 38. Yeah, it's Page
18 38. If you see Page 38 at the top, right
19 above the big black box.
20 A. I see Page 39.
21 Q. 38.
22 A. Store 1431?
23 Q. Store 1431. Correct. It's
24 a hydrocodone order -- or hydrocodone

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1 drug, rather?
2 A. Yeah, it's Page 39 on mine.
3 Okay.
4 Q. Okay. And if you look at
5 that, what's the score that's associated
6 with that?
7 A. Score, I see in this
8 document, it looks like it's .99.
9 Q. Okay. Do you know if the
10 max is one?
11 A. I don't recall.
12 Q. With a score of .99, do you
13 know of any reason, looking at this
14 report itself, why this particular order
15 would not have been escalated for further
16 review?
17 MS. MILLER: Objection.
18 THE WITNESS: No, I -- I
19 can't really recall to comment on
20 it.
21 MR. DeROCHE: Let's go off
22 the record for one minute.
23 THE VIDEOGRAPHER: Going off
24 the record. The time is 5:38.

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1 (Short break.)
2 THE VIDEOGRAPHER: Going
3 back on record. Beginning of
4 Media File Number 12. The time is
5 5:40.
6 MR. DeROCHE: Thank you for
7 your time. We have nothing
8 further.
9 THE VIDEOGRAPHER: No
10 questions?
11 MS. MILLER: No questions.
12 Thank you.
13 THE VIDEOGRAPHER: This
14 concludes today's deposition.
15 We're going off the record. The
16 time is 5:40.
17 (Excused.)
18 (Deposition concluded at
19 approximately 5:40 p.m.)
20
21
22
23
24

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1
2 **CERTIFICATE**
3
4
5 I HEREBY CERTIFY that the
6 witness was duly sworn by me and that the
7 deposition is a true record of the
8 testimony given by the witness.
9
10 It was requested before
11 completion of the deposition that the
12 witness, FRANK DEVLIN, have the
13 opportunity to read and sign the
14 deposition transcript.
15
16
17
18
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23
24

MICHELLE L. GRAY,
A Registered Professional
Reporter, Certified Shorthand
Reporter, Certified Realtime
Reporter and Notary Public
Dated: January 15, 2019

(The foregoing certification
of this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

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1
2 **INSTRUCTIONS TO WITNESS**
3
4 Please read your deposition
5 over carefully and make any necessary
6 corrections. You should state the reason
7 in the appropriate space on the errata
8 sheet for any corrections that are made.
9 After doing so, please sign
10 the errata sheet and date it.
11 You are signing same subject
12 to the changes you have noted on the
13 errata sheet, which will be attached to
14 your deposition.
15 It is imperative that you
16 return the original errata sheet to the
17 deposing attorney within thirty (30) days
18 of receipt of the deposition transcript
19 by you. If you fail to do so, the
20 deposition transcript may be deemed to be
21 accurate and may be used in court.
22
23
24

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1
2 - - - - -
3 **E R R A T A**
4 - - - - -
5
6 **PAGE LINE CHANGE**
7
8 **REASON:** _____
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10 **REASON:** _____
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22 **REASON:** _____
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24 **REASON:** _____

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1
2 **ACKNOWLEDGMENT OF DEPONENT**
3
4 I, _____, do
5 hereby certify that I have read the
6 foregoing pages, 1 - 490, and that the
7 same is a correct transcription of the
8 answers given by me to the questions
9 therein propounded, except for the
10 corrections or changes in form or
11 substance, if any, noted in the attached
12 Errata Sheet.
13
14
15
16 **FRANK DEVLIN** **DATE**
17
18
19 Subscribed and sworn
20 to before me this
21 _____ day of _____, 20____.
22 My commission expires: _____
23
24 Notary Public

1	LAWYER'S NOTES		
2	PAGE LINE		
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